

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-80121-Cr-Marra/Hopkins

UNITED STATES OF AMERICA
Plaintiff,

vs.

WARREN H. NEWELL,
Defendant.

GOVERNMENT'S AGREED MOTION TO REDUCE SENTENCE

The United States of America, by and through the undersigned Assistant United States Attorneys, hereby file this Agreed Motion to Reduce the Sentence of the defendant, WARREN H. NEWELL, pursuant to *Fed. R. Crim. P.* 35(b) as follows:

1. Defendant, Warren H. Newell was charged in a criminal Information on August 7, 2007 with Conspiracy to Commit Honest Services Fraud. This charge related to Newell's knowing and willful participation in, and execution of, a concerted plan to secretly profit from several projects on which he either voted or used his good office to exert his political will, which actions all inured to his considerable financial benefit. Newell utilized his public position as a county commissioner to advance and conceal his secret financial interest with others in three separate transactions in Palm Beach County.

2. In those now well-documented transactions, Newell earned secret fees from a "success fee" contract between his engineering firm, SFRN, and Palm Beach Aggregates regarding water storage at rockpits owned by Aggregates and paid for by the citizens through the South Florida Water Management District. Newell voted on allowing this storage on numerous occasions without

truthfully disclosing his hidden interest in the success fee. In this scheme, Newell and Daniel Shalloway, Newell's business partner at SFRN, concocted a scheme to hide the "rockpit profits" which were legitimately generated through a corporation specifically designed for that purpose, as income through regular engineering services at SFRN. Further, Newell and Shalloway created a fraudulent promissory note disguising other "rockpit profits" as a loan from Shalloway. To compound his malfeasance, Newell filed false forms under oath with the State of Florida claiming that he owed Shalloway \$200,000, and finally, made those same false claims to the Federal Bureau of Investigation and Internal Revenue Service when he was interviewed in January 2007.

3. In the second scheme, Newell directed \$14 million in public monies to his friend and business partner Leo Berman to purchase Berman's development rights at a waterfront marina in Palm Beach County. Newell publicly advocated for, and voted on this measure several times without disclosing his significant and material financial interests with Berman, which included investment in a financial institution (Legacy Bank) and free dockage at Berman's marina. In May 2006, after the \$14,000,000 award to Berman's marina and Newell's investment in Legacy Bank, Newell agreed with Leo Berman and Shalloway to create a false and fraudulent SFRN invoice to Berman's marina which was designed and intended to create an appearance that Newell paid his significant and outstanding marina bill, however, in actuality Newell paid the marina bill with monies generated from the fraudulent invoice and paid Berman's marina with the marina's own money.

4. While this orchestrated circuitous money flow was plainly fraudulent, Newell magnified the crime by lying about it to the FBI and IRS at his voluntary interview with counsel present on January 26, 2007. At that time, Newell stated that he paid his marina bill with his own

money and that the debt was something he agreed with the marina to allow to accumulate because he did not want to bear that cost alone while going through a divorce.

5. The final scheme involved Newell's investment in real estate designed to be developed as a medical facility. Newell voted on variances for this project, while secretly receiving monies from the profits. Again, to compound the deception, Newell "officially" resigned from the project but still participated in project-related meetings, and when the profits were generated from the sale of the real estate to the medical company, demanded and received over \$100,000 in profits.

6. Combining all of the illicit schemes, Newell profited nearly \$500,000 from his misdeeds.

7. On November 20, 2007, Newell pled guilty to the Information. The advisory Sentencing Guidelines Range calculated by the United States Probation Office for Newell's offenses was 108-135 months' imprisonment. On January 11, 2008, this Court sentenced Newell to the maximum term of 60 months' imprisonment to be followed by a term of 2 years' of supervised release. Newell also forfeited \$135,000 to the United States. Defendant Newell surrendered to the Bureau of Prisons on or about February 15, 2008. He has been continuously in custody since that date.

8. Prior to his sentence being imposed, as well as afterwards, Newell cooperated extensively with the FBI and IRS. During those debriefings, Newell provided extensive information to the United States on a number of topics of interest regarding public corruption in Palm Beach County. At this juncture, certain aspects of Newell's information can be deemed substantial and material to the United States' efforts to bring other public officials involved in criminal activity to justice.

9. The particulars of the information related by Newell to the United States and federal law enforcement are contained in the SEALED pleading filed with the Court. While some of that information is public, as it is contained in the criminal information charged in *United States v. Mary B. McCarty*, case number 09-80004-Cr-Middlebrooks, much of it remains under active criminal investigation and disclosure in the public record could effect on-going federal investigations. Mary B. McCarty is pending sentencing before District Judge Donald M. Middlebrooks on June 4, 2009.

10. The United States and Newell, through counsel, have discussed and agreed to a recommended sentence reduction for Newell because of his substantial cooperation with law enforcement. We jointly recommend that this Court reduce Newell's sentence to 36 months' imprisonment, with all other terms remaining unchanged. This sentence will still result in significant punishment for Newell's extensive crimes and violation of the public trust, but, at the same time, provide a reward to Newell for his substantial cooperation and provide an incentive for other similarly situated individuals to provide truthful information to the United States regarding the commission of crimes by other public officials.

WHEREFORE, based on defendant Warren H. Newell's extensive and substantial cooperation with the United States prior and subsequent to his sentencing, the United States respectfully requests

that this Court order a reduction of Newell's sentence by 40% to a term of 36 months' incarceration with all other terms of sentencing remaining unchanged.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2009, I electronically filed the foregoing Government's Agreed Motion to Reduce Sentence with the Clerk of the Court using CM/ECF.

John S. Kastrenakes
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SERVICE LIST

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