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SCSL-11-02-T
(427-432)

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SPECIAL COURT FOR SIERRA LEONE

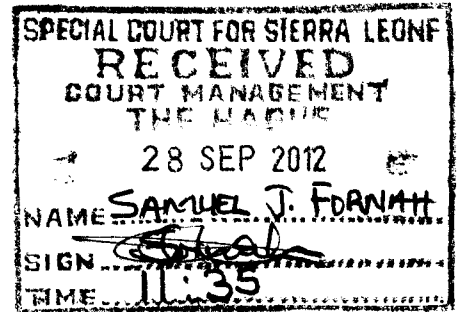
TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding
Single Judge of Trial Chamber II

Registrar: Ms. Binta Mansaray

Case No.: SCSL-11-02-T

Date filed: 27 September 2012



PROSECUTOR

Against

**Hassan Papa Bangura
Samuel Kargbo
Santigie Borbor Kanu
Brima Bazy Kamara**

**PUBLIC
PROSECUTOR'S SENTENCING SUBMISSIONS**

Office of the Independent Counsel:
Mr Robert L. Herbst

Counsel for the Accused:
Mr Melron Nicol Wilson
Chief Charles A. Taku
Mr Kevin Metzger
Mr A.F. Serry Kamal

Office of the Principal Defender:
Ms Claire Carlton-Hanciles

1. These written submissions are respectfully submitted to assist the Court in sentencing the defendants.
2. I respectfully refer this Court to the OTP's 25 June 2012 Amicus Curiae Brief filed in connection with the Senessie sentencing, as it comprehensively sets forth the applicable rules and sentencing ranges; the relevant objectives in sentencing, including specific and general deterrence; and a survey of previous sentences in contempt cases in this and other international criminal tribunals.
3. Because of this Court's vast judicial experience and knowledge of Sierra Leone, I am confident that its instincts and judgment about the sentences to be imposed on these defendants will be sound. Moreover, it is my respectful view that sentencing should be more the province of judges than prosecutors, and even less, perhaps, of Independent Counsels, who are generally of more assistance to criminal courts and tribunals in the investigative and trial phases of a case than in sentencing. It was my practice, in the "earlier era" in which I was a prosecutor, not to offer specific sentencing recommendations, but rather to limit myself to relevant observations, and occasionally suggestions of appropriate sentencing ranges, that the sentencing judge might find sensible and helpful. I hope to follow that practice here.
4. I will first address the sentences to be imposed upon the three accused who were convicted at trial. I will then address the sentence to be imposed upon Mr. Kargbo, who pleaded guilty and testified as a prosecution witness pursuant to the plea agreement in evidence before the Court.

Suggestions with respect to the sentences of Kamara, Kanu and Bangura

5. An appropriate sentence is one severe enough to accomplish the legitimate purposes, objectives and goals of sentencing, such as specific and general deterrence, rehabilitation and retribution; but no more severe than necessary to accomplish them.
6. A sentence of imprisonment sufficient to punish the defendants and to deter them and others similarly situated from engaging in similar conduct in the future would seem clearly to be called for in this case.

7. Because convicts Kamara and Kanu were previously convicted in this Special Court and are already incarcerated for other crimes, any sentence of imprisonment, to be at all meaningful, would have to be imposed consecutively rather than concurrently.
8. Moreover, because both Kamara and Kanu are already serving very lengthy sentences (45 and 50 years), the consecutive sentences of imprisonment imposed for these new offenses would have to be toward the high end of the sentencing range in order to have any hope of accomplishing the sentencing objective of specific deterrence, i.e., of discouraging them from attempting to commit a similar offense in the future. Such a sentence would also redound to the benefit of the goal of general deterrence, i.e., discouraging others in the community from attempting to commit similar offenses.
9. Each defendant has been convicted on two counts, and therefore could be sentenced to a maximum sentence of seven years on each count. While it is important that any sentence on these new convictions be imposed consecutively to the sentences already being served, it would only be necessary to sentence Kamara and/or Kanu to consecutive sentences on each of the two new counts of conviction if the Court were persuaded that a sentence of more than seven years were necessary to accomplish the legitimate objectives of sentencing. (The same is true of the maximum fine which may be imposed in this case).
10. The contempt offenses of which Kamara and Kanu now stand convicted are serious crimes, striking at the heart of the integrity of the Court's processes for administering justice. Corruptly contacting and attempting to persuade critical witnesses to recant their testimony, and in Kanu's case, offering a bribe to do so, is misconduct which is simply intolerable. So is Kamara's disclosure of a protected witness's identity to the same end. Manufacturing new evidence to support review proceedings in this Court must be punished and discouraged. Accordingly, the gravity of the offense alone requires a relatively substantial term of imprisonment. That the contemptuous scheme was reported by to the authorities by 334 and was stopped in its tracks relatively early in this case was fortuitous and ought not to weigh heavily as a mitigating factor.

11. The convict Bangura was not previously incarcerated, so the considerations in ¶¶ 7-8 above do not apply to him. He was also not a beneficiary of the scheme. However, Bangura not only willingly joined the scheme, and offered a bribe, but he was the defendant who most clearly used threats and intimidation in attempting to persuade 334 to recant his testimony. Accordingly, the gravity of his criminal conduct should weigh more heavily as an aggravating factor in sentencing. So should his continuing efforts to obstruct justice after he was indicted, continuing to contact 334 and urging him to change his testimony to exculpate Bangura. Bangura clearly displayed his utter lack of respect – indeed, his contempt -- for this Court’s administration of justice, and frankly, he did so in stunning fashion, considering that his indictment on charges of obstructing justice by attempting to persuade 334 to change his testimony apparently did absolutely nothing to deter him from doing precisely the same thing again. It therefore appears that a substantial term of imprisonment will be necessary to punish and deter Bangura from similar misconduct in the future.
12. All three defendants took the witness stand in this case and testified falsely. This should also be considered an aggravating factor in determining an appropriate sentence.
13. Because of the need for sentences of imprisonment in this case, any fine imposed upon Bangura should be in addition to rather than an alternative to incarceration.

Suggestions with respect to the sentence of Kargbo

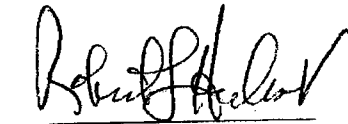
14. Samuel Kargbo will be sentenced upon his plea of guilty to both counts of the indictment. The Court has before it his plea agreement, and has heard him and 334 testify about his misconduct in this case. Like Bangura, Mr. Kargbo willingly agreed to participate in the contemptuous scheme and persisted in attempting to persuade 334 to recant his testimony and offered him money to do so, but it was Bangura rather than Mr. Kargbo who uttered the words threatening 334.
15. Mr. Kargbo’s plea agreement requires me to inform the Court of all of the particulars of Samuel Kargbo’s substantial cooperation from the beginning of the Independent Counsel’s investigation, and of the remorse he has shown for his

participation in the offences charged, and to recommend leniency to the Court in imposing sentence upon Samuel Kargbo. However, I do that not because I am required to do so, but because he has fully performed his obligations and has truly rendered substantial, perhaps even extraordinary, cooperation. From the beginning of my investigation, when he swore off counsel that had apparently been provided for him by others, and indicated to me that he was remorseful for what he had done and was willing to plead guilty and tell the truth, Mr. Kargbo has done all that was asked of him. He eminently deserves the leniency I am wholeheartedly recommending.

16. I also endorse the Court's observations about Mr. Kargbo's testimony in this case. He was entirely credible in manner and substance. Moreover, while I have not yet had the opportunity to analyze the Court's Judgment, it is apparent that Mr. Kargbo's cooperation and testimony were essential to the result. His cooperation and agreement to acknowledge his guilt and to testify truthfully significantly augmented the available evidence of guilt of all three accused.
17. Accordingly, while Mr. Kargbo's misconduct was serious and unjustifiable, that must be weighed against his subsequent remorse and invaluable cooperation in seeking to make amends for that misconduct. In determining an appropriate sentence for Mr. Kargbo, I would suggest that encouraging such cooperation is a most appropriate goal in sentencing. That is an absolute necessity in this and most other criminal justice systems. It often takes courage to do the right thing and provide such cooperation, and there are often grave disincentives to so doing. Moreover, once a suspect or accused shows genuine remorse by such cooperation, the necessity to punish and deter him or her by a prison sentence often evaporates. Indeed, incarcerating such a defendant in the face of such cooperation often sends precisely the opposite message to the community, i.e., that such cooperation will not be honored or rewarded.
18. Accordingly, I respectfully submit that Mr. Kargbo may properly be sentenced to a non-custodial term of probation. Alternatively, if the Court determines that the gravity of his offenses require some sentence of imprisonment, I respectfully submit that the period of such imprisonment be very significantly shorter than the

terms of imprisonment imposed upon any of the other three convicts, for the reasons stated above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert L. Herbst", written over a horizontal line.

Robert L. Herbst

Independent Counsel

Dated: 27 September 2012