Dec. 1, 2005
White Deer, PA

Hon. Rya W. Zobel
U.S. District Judge
Moakley Federal Courthouse
One Courthouse Way
Boston, MA 02110

Re: U.S. v. Alfred W. Trenkler
D.C. Case No. Crim. A-92-10369-Z
Statutorily Barred Life Sentences

Dear Judge Zobel:

I am writing to you as a matter of last resort. I don't know if you recall my case, but you sentenced me to two (2) concurrent life terms in March of 1994. Recently, upon researching the statutes I was convicted under, it is apparent that, absent a recommendation from the jury, you were without jurisdiction to independently impose life sentences as a matter of law. Hence, this letter to you.

The applicable statute, 18 U.S.C. §34, which is part of §844(d) and §844(i), as it read in March of 1994, specifically provided that a sentence of life could only be imposed upon the recommendation of the jury following a jury trial. Since the matter of punishment was never presented to the jury, the statute prohibits the court from independently imposing a life sentence. As a result, the sentence I am currently serving is, in fact, an illegal sentence, because it was not permitted by law under the statute in effect at that time.

In trying to see how this could have occurred, I turned to the PSI report. There, the probation dept. even overlooked the mandatory requirements of the statute and mistakenly stated that you could impose a life term. It is apparent that no one, including the USPO, the AUSA, my defense counsel, nor the Court, realized that the statute then in effect prohibited a life term without it so being recommended by the jury. Accordingly, the Court could only impose a term amounting to a number of years and not life.

Recently, in a case of similar impression, Judge Wolf re-sentenced a defendant who was in the similar predicament. That case, U.S. v. Barone, was widely publicized and upon reading about it, that is what prompted me to research the sentencing

issue in my case. In the Barone case, just as in mine, everyone involved failed to notice the sentencing error. The only significant difference in the two cases is that Barone's life sentence was the result of a calculation error, whereas the error in my case is simply that the statute was not adhered to.

Relevant to all of this is the fact that the applicable statute was later amended to allow the court to independently impose a life sentence, but that does not apply to me. This later change in the law, may have contributed to perhaps why the Court of Appeals failed to see this plain error on direct appeal.

Judge Zobel, I am not an attorney and am not well versed in the law. However, I feel the primary responsibility of correcting this illegality falls upon you, the sentencing court. Especially so since you failed to follow the mandatory statutory requirements of 18 USC §34, as contained in §844(d) and (i). In light of the amount of time that has lapsed since my 1994 sentencing and the fact that my appeals process has ended, I feel my only avenue of legal recourse is to now bring this to your attention.

Absent any action on your behalf, perhaps the only other remedy available would be to move the local district court in a habeas action to discharge me from custody since, without question, I am in fact serving a sentence that was not authorized by law. I don't know if that is the proper way to proceed or not, so I will defer to you, by way of this letter, to make any sentencing correction that you would deem appropriate in light of this revelation.

Thank you for taking your time to read this and I await your response.

Sincerely,

Alfred W. Trenkler
No. 19377-038 1-B
U.S. Penitentiary
P.O. Box 3000
White Deer, PA 17887

enclosures: 3

cc: U.S. Attorney
Wm. G. Young, Chief Judge
Mark Wolf, District Judge
Dana Curhan, Esq.
Scott Lopez, Atty
Terry Segal, Atty
Ken Chandler, Boston Herald
John D. Wallace

or destroying aircraft, except that no act was made criminal under 18 USCS § 33 unless done with intent to endanger, or with reckless disregard for, human life. United States v Rutherford (1964, CA2 NY) 332 F2d 444, cert den (1964) 377 US 994, 12 L Ed 2d 1046, 84 S Ct 1922.

Willful damage to motor vehicle is essential element of crime proscribed by 18 USCS § 33, since grammatical construction, actual language of statute and legislative history require this conclusion. United States v Kurka (1987, CA9 Or) 818 F2d 1427, 23 Fed Rules Evid Serv 595, appeal after remand (1989, CA9 Or) 867 F2d 614.

4. Indictment or information

Failure to include element of willfulness under 18 USCS § 33 renders indictment constitutionally defective. United States v Kurka (1987, CA9 Or) 818 F2d 1427, 23 Fed Rules Evid Serv 595, appeal after remand (1989, CA9 Or) 867 F2d 614.

5. Instructions

Defendant convicted of aiding and abetting co-defendant in violation of 18 USCS § 33 would be entitled to voluntary intoxication instruction if evidenced of intoxication supports it. United States v Kurka (1987, CA9 Or) 818 F2d 1427, 23 Fed Rules Evid Serv 595, appeal after remand (1989, CA9 Or) 867 F2d 614.

6. Defenses

Voluntary intoxication may constitute defense to element of willfulness under 18 USCS § 33 by precluding formation of specific intent. United States v Kurka (1987, CA9 Or) 818 F2d 1427, 23 Fed Rules Evid Serv 595, appeal after remand (1989, CA9 Or) 867 F2d 614.

§ 34. Penalty when death results

[redacted] or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order.

(Added July 14, 1956, ch 595, § 1, 70 Stat. 540.)

CROSS REFERENCES

Sentencing guidelines, Statutory Index, Sentencing Guidelines for U. S. Courts, 18 USCS Appendix.

[redacted]

RESEARCH GUIDE

Am Jur:

7A Am Jur 2d, Automobiles and Highway Traffic § 354.

8 Am Jur 2d, Aviation § 160.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Jury recommendation or waiver

1. Generally

Passage of 18 USCS § 34 was one of two occasions that Congress expressly authorized infliction of capital punishment upon defendants convicted without jury. United States v Jackson (1968) 390 US 570, 20 L Ed 2d 138, 88 S Ct 1209.

Presumably, capital punishment is no longer available for aircraft or motor vehicle destruction where death occurs [18 USCS § 34]. Furman v Georgia (1972) 408 US 238, 33 L Ed 2d 346, 92 S Ct 2726, reh den (1972) 409 US 902, 34 L Ed 2d 163, 93 S Ct 89 and on remand (1972) 229 Ga 731, 194 SE2d 410.

2. Jury recommendation or waiver

Defendant convicted of planting pipe bomb which results in killing may not be sentenced under 18 USCS §§ 34, 844, to life imprisonment in absence of jury recommendation or jury waiver. United States v Williams (1985, CA5 Tex) 775 F2d 1295, cert den (1986) 475 US 1089, 89 L Ed 2d 732, 106 S Ct 1477, appeal after remand (1987, CA5 Tex) 819 F2d 605, reh den, en banc (1987, CA5 Tex) 826 F2d 12 and cert den (1988) 484 US 1017, 98 L Ed 2d 675, 108 S Ct 726.

sense.

Note that a reasonable doubt may arise both from the evidence adduced or from the lack of evidence. It's not sufficient for the government to establish a probability, even a strong one, that the defendant is guilty. And the defendant may not be convicted on the basis of suspicion or conjecture.

If you view the evidence in the case as reasonably leading to one of two conclusions, either that the defendant is guilty or that the defendant is not guilty, then you cannot convict. You must find the defendant not guilty.

If after examining all of the evidence as to a particular count and drawing reasonable inferences therefrom, you are left with a clear and settled conviction of the defendant's guilt as to that count, then you may find the defendant guilty on that charge. If, on the other hand, you are left with a reasonable doubt about the defendant's guilt, he is entitled to the benefit of that doubt, and you must find him not guilty on that charge.

[redacted]

You will have with you in the jury room, a copy of the indictment in the case. Understand that the indictment is

PART D. SENTENCING OPTIONS

Custody

(112) **Statutory Provisions:** The maximum term of imprisonment is 5 years on Count One. [redacted] 18 U.S.C. § 3559(a) classifies Count One as a Class D felony and Counts Two and Three as a Class A felonies.

(113) **Guideline Provisions:** Based upon a total offense level of 45 and a criminal history category of I, the guideline imprisonment range is life imprisonment.

Impact of Plea Agreement

(114) None

Good Time Provisions

(115) As per 18 U.S.C. § 3624(b), prisoners who are serving a term of imprisonment of more than one year and have shown a satisfactory institutional adjustment shall receive credit toward the service of their sentence of 54 days at the end of each year of their term of imprisonment, beginning at the end of the first year of their term of imprisonment. Such credit vests at the time of accrual and cannot be later withdrawn. Credit for the last year or portion of that year shall be prorated.

(116) Good time cannot be earned on a sentence of one year or less; the sentence must exceed one year, even by one day. According to the Bureau of Prisons, for a sentence of one year and one day, good time would be prorated and would amount to 47 days.

Supervised Release

(117) **Statutory Provisions:** Pursuant to 18 U.S.C. § 3583(b), if a term of imprisonment is imposed, the court may impose a term of supervised release of not more than three years on Count One, since it is a Class D felony, and not more than five years on Counts Two and Three, since it they are Class A felonies. Pursuant to 18 U.S.C. 3624(e), such terms shall run concurrently.

(118) **Guideline Provisions:** If more than one year imprisonment is imposed, supervised release is required by the guidelines pursuant to U.S.S.G. § 5D1.1. On Count One, the term of supervised release is two (2) to three (3) years, pursuant to U.S.S.G. § 5D1.2(b)(2). On Counts Two and Three, the term of supervised release is three (3) to five (5) years, pursuant to U.S.S.G. § 5D1.2(b)(1).