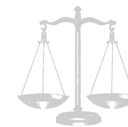
Clemency:
A View From the Bench of Two Commutations—Vignali and Willis



DAVID S. DOTY

Senior United States District Judge, District of Minnesota

In the early 1990s, I sentenced three offenders — Serena Nunn, Kim Willis and Carlos Vignali — to long prison terms following convictions for dealing drugs. In July 2000 and January 2001, all three received commutations. Under the Constitution it is clear that the president had the absolute power to do what he did.

I wrote letters to President Clinton supporting the clemency petitions of Nunn and Willis at their requests. Both had limited involvement in a large drug conspiracy[1] and I thought my view of their cases might contribute to the president's exercise of discretion. The sentence of the third dealer, Carlos Vignali, was commuted without any advance knowledge on my part[2] and I reacted as might any judge who had the sincere belief that the action was unwarranted. I was disappointed, believing that justice had not been served. Following the publicity surrounding the Vignali commutation, and in light of my involvement in the other two cases, guest editor Margaret Love invited me to share my experience with readers of the *Federal Sentencing Reporter*.

A comparison of the Willis and Vignali commutations will illustrate my views. Both young men were involved in large-scale drug distribution conspiracies, stood trial and were found guilty by a jury. I sentenced both of them to Guideline sentences, Willis to 188 months and Vignali to 175 months. Both of their sentences were commuted on January 20, 2001, and both were set free after serving a substantial time in prison — Willis after serving 132 months, Vignali after serving 73 months. From my point of view as the sentencing judge, the Willis commutation was a textbook example of how and why it should be done.

1. Kim Willis

a. The criminal case

Kim Willis was nineteen years old when he was indicted in 1989 for participation in a large drug conspiracy headed by a notorious St. Paul drug dealer named Plukey Duke. Willis had no previous convictions, was a life-long resident of St. Paul, had a strong family background and was a "fourth tier" participant, that is, he was at the bottom of the organization. The evidence against Willis was sparse, but sufficient for a jury to find him guilty. The amount of drugs attributed to him through the conspiracy gave him a criminal offense level of 36 and, with a criminal history category of I, resulted in a sentencing range of 188 to 235 months. In April 1990, I sentenced him to the bottom of the guideline range.

The biggest problem Willis had was that he was so far down the organization hierarchy that he knew little and could not swing a deal with the government. The result was that he stood trial and could not receive a motion for a downward departure. As all federal sentencing judges know, under the scheme of sentencing statutes and guidelines that factual combination spells disaster for a peripheral defendant. The only outcome is a straight sentence within the guidelines, which with a drug offense is usually draconian. At the sentencing hearing I told Willis I thought he had received an unfair sentence compared to his fellow conspirators.[3]

b. Willis's post-conviction conduct

Even before sentencing, Willis indicated to the probation officer that he was going to make constructive use of his time while incarcerated. At the sentencing hearing he told me the same thing. He impressed me with his genuine remorse and concern for what he had done to himself and his family. He expressed a belief that he would return to society a better man because of what had happened to him.

What he did during the eleven years he was incarcerated proved his sincerity. He got his GED. He studied and earned certificates in blueprint reading and welding. He took advantage of other educational opportunities, including courses in self-improvement. As promised, he maintained a positive attitude and worked his way up to the Federal Prison Camp in Duluth, Minnesota. There he started taking college courses at Lake Superior College where he attained a 3.7 cumulative GPA and was on the dean's list. While at the Duluth camp, Willis took part in the Youth Awareness Program. That program allows selected prisoners to leave the prison to talk to young people about the dangers of becoming involved with drugs. In his discussions he took full responsibility for the choices he had made. He did not blame poverty, his family or racial discrimination for his incarceration. All in all, Willis illustrated in a dramatic way that he was deserving of a commutation.

c. Sam Sheldon's representation

The most important thing that happened to Willis in his quest for mercy was connecting with Sam Sheldon. The connection came through Willis's friendship with Serena Nunn, whose case had earlier caught the attention of Sheldon, a recent law school graduate. After representing Nunn *pro bono*, and obtaining her commutation of sentence and release by President Clinton in July 2000, Sheldon learned that Willis, one of Nunn's codefendants in the conspiracy, had a similar background. Sheldon investigated and determined to

try for the nearly impossible goal of one additional commutation. Again he acted without a fee, and again he supported his petition for clemency with powerful facts and impressive endorsements, including letters from the sentencing judge and from Eighth Circuit Judge Gerald Heaney, who had participated in the review of Willis's appeal and had written often about the unfairness of the drug laws and the sentencing guidelines. Sheldon also persuaded the prosecutor to indicate no opposition to Willis's petition for commutation. It is a testimonial to Sheldon's work and determination that Willis too had his sentence commuted.

Willis was granted clemency because he deserved it, because he had a fine *pro bono* lawyer who followed the rules, and because factual justifications for clemency supported the grant.[4] He had been a minor player in a large drug conspiracy which resulted in a very long sentence. He had been sentenced under a scheme of statutes and guidelines that deserved criticism and reexamination, and he had applied his time wisely during a long period of incarceration.

2. Carlos Vignali, Jr.

The case of Carlos Vignali, Jr. had some similarities to that of Kim Willis. Vignali was a young man with a strong, supportive family when he was found guilty of participating in a large drug conspiracy. The scheme of statutes and guidelines was basically the same as that applied to Willis and led to a long sentence. The need to criticize and reexamine those laws was, and is, certainly present and Vignali had served a portion of his long drug sentence.

Significant differences between the Vignali and Willis cases and commutations existed, however. Vignali was not a low level operator in the conspiracy. He played a major role in the financing, transport and procurement of the drugs. The amount of drugs attributable to Vignali by the pre-sentence investigation report was between 15 and 50 kilograms. That quantity was reduced by the sentencing judge's interpretation of the trial evidence, and led to a finding of responsibility for between 5 and 15 kilograms of cocaine. On July 17, 1995, after adding an adjustment for obstruction of justice, a base offense level of 34 led the sentencing judge to impose a sentence of 175 months, at the upper end of the guidelines, but lower than that sought by the prosecutor.

Vignali showed no signs of remorse and took no responsibility for his role in the crime prior to or during sentencing. I thought that the sentence Vignali received was fair when compared to his fellow conspirators. To the court's knowledge, Vignali made no post-sentencing effort to accept responsibility or to show rehabilitation.

Even if all the facts that favor Vignali are given credence, the manner in which his petition was presented differed from Willis's case. Little is known about the contents of Vignali's petition or about how it reached the President, though this has been the subject of speculation in the press.[5] It is clear that the petition for clemency was not supported by a letter from the sentencing judge or the prosecutor. The judge was not asked by anyone to respond. When the prosecutor was asked, he responded in a strongly worded letter to the effect that a commutation should not be given.

Conclusion

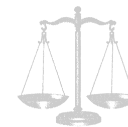
Of course, the Constitution does not require that the sentencing judge or the prosecutor weigh in on behalf of a petitioner before clemency is granted. In the clemency matters of Willis and Nunn, where the judge wrote a letter in support and the prosecutor indicated no opposition, it appeared to make a difference. In Vignali's case, however, where the judge was not contacted and the prosecutor strongly recommended against clemency, it did not appear to make a difference.[6]

Should the President have been influenced by the fact that the prosecutor and the judge did or did not support a particular act of clemency? Should it matter that, in the Vignali case, the prosecutor was outraged and the judge was astonished and thought that justice was not done? I do not think so, because of the distinction between justice and mercy. Prosecutors take an oath to enforce the law and judges take an oath to do justice, and that is what they should do. The pardon power of the Constitution may be exercised by the President without regard to their views about a case because his is an act of mercy.

Notes

1. *United States v. Serena Nunn*, Criminal No. 4–89–94, (commutation granted July 7, 2000); *United States v. Kim Willis*, Criminal No. 4–89–94 (commutation granted January 20, 2001).
2. *United States v. Carols Vignali, Jr.*, Criminal No. 4–93–166 (commutation granted January 20, 2001).
3. Serena Nunn had a similar background to Willis, was also a co-conspirator in the Plukey Duke gang and, for similar reasons as those affecting Willis, received a 188-month sentence. For information as to what happened to Serena Nunn, see articles appearing in the Minneapolis Star Tribune, July 10, 2000, July 11, 2000 and January 21, 2001. Other conspirators pleaded guilty and cooperated with the government thereby reducing their sentences.
4. For a discussion of clemency, its history and justifications, see Margaret Colgate Love, *Of Pardons, Politics and Collar Buttons: Reflections on the President's Duty to be Merciful*, 27 Fordham Urban Law Journal 1483 (2000).
5. Richard A. Serrano & Stephen Braun, *Drug Kingpin's Release Adds to Clemency Uproar*, L.A. Times, Feb. 11, 2001, at A1.
6. *See, e.g.*, Stephen Braun & Richard A. Serrano, *More Clemency Lobbying by Rodham Alleged*, L.A. Times, Feb. 26, 2001.

Judge Doty's Letter to the President Recommending Commutation of Kim Allen Willis's Sentence



Letter from The Honorable David S. Doty (D. Minn.) to President Bill Clinton, August 22, 2000.

August 22, 2000

President William J. Clinton
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Re: Kim Allen Willis, Federal Reg. No. 041013-041
Petition for Commutation of Sentence

Dear President Clinton:

On July 7, 2000, you granted Ms. Serena Nunn's Petition for Commutation of Sentence. In 1990, following Ms. Nunn's conviction by a jury of drug related offenses in the U.S. District Court for the District of Minnesota, I sentenced her to a term of 188 months in prison. Ms. Nunn's case marked the first-time since my appointment in 1987 by President Reagan that I had ever written a letter in support of a Petition for Commutation of Sentence.

I was recently informed by Kim Willis' pro bono counsel that Mr. Willis will be submitting a Petition for Commutation of Sentence. Mr. Willis was one of the twenty-four defendants involved in the *same* case as Ms. Nunn. In 1990, following Mr. Willis' conviction by a jury of drug related offenses, similar to Ms. Nunn, I sentenced him to a term of 188 months in prison. (Case No. Criminal 4–89–94 (8)). To date, Mr. Willis has been incarcerated for approximately 128 months and is scheduled to be released in September 2003. I am writing to respectfully request that you grant Mr. Willis' Petition for Commutation of Sentence based on the following three grounds: (1) the unfairness of the mandatory-minimum sentencing guidelines as they were applied to Mr. Willis; (2) Mr. Willis' significant rehabilitative accomplishments while incarcerated; and (3) the poor health of Mr. Willis' mother.

I. Factual Background

In 1989, the United States Grand Jury for the District of Minnesota issued an Indictment naming 24 defendants. The Indictment was primarily related to a conspiracy to distribute cocaine. As discussed above, Mr. Willis was one of the named defendants and was accused of committing the following crimes: (1) aiding and abetting in the attempt to possess approximately 20 kilograms of cocaine with the intent to distribute and (2) conspiracy to possess with the intent to distribute 5 kilograms or more of cocaine.

At the time of the Indictment, Mr. Willis was 19 years old. He had no prior criminal convictions. Mr. Willis was a lifelong resident of Minnesota. He was raised in the inner-city of St. Paul. As a kid, Mr. Willis aspired to win a Gold Medal in martial arts at the Olympics. As a teenager, he trained religiously every day to make his dream come true. In 1987, however, Mr. Willis dropped out of high school in the eleventh grade. This is when his troubles began.

Mr. Willis was friends with Ralph Lamont Nunn aka Monte. Monte's father, Ralph Duke aka Plukey, was the leader of the biggest cocaine ring in the State of Minnesota. Monte was also dealing drugs himself. In May 1989, Monte was arrested after attempting to purchase approximately 20 kilograms of cocaine from a government informant. The government had set up a reverse-sting operation with the specific intention of catching Monte and his father, Plukey. Subsequently, all 24 defendants including Mr. Willis were indicted.

At trial, the government asserted that Plukey set up a "four-tier pyramid scheme" to distribute the drugs. According to the government, Mr. Willis was at the bottom of Plukey's pyramid scheme. Prior to trial, the government offered several of the defendants plea bargains in return for their cooperation and testimony against the remaining defendants. Many of the defendants accepted the plea bargains and received sentences that ranged from one to seven years. One of the defendants who received a plea bargain was Marvin McCaleb. Mr. McCaleb was Plukey's *equal* in the drug distribution pyramid scheme and was the government's star witness at trial. In return for Mr. McCaleb's testimony, the government did not charge him in Minnesota, but instead brought unrelated drug charges against him in federal court in Los Angeles, California. Despite his role as a leader in Plukey's conspiracy and his prior criminal convictions that included rape and manslaughter, Mr. McCaleb received a seven year sentence under the "old" sentencing guidelines by a federal judge in Los Angeles. After Plukey's conviction, I sentenced him to life in prison without the possibility of parole.

Initially, Mr. Willis was offered a plea bargain in which he would have received a sentence of up to 10 years if he pled guilty. However, by the time Mr. Willis' trial counsel informed the government that Mr. Willis would accept the plea bargain, the government told his trial counsel that it was too late and that the offer had been previously withdrawn. The government's charging tactics in this case and, specifically as to Mr. Willis, were expressly criticized by Senior Circuit Judge

Heaney in *United States v. Hammer*, 940 F.2d 1141 (8th Cir. 1991). Judge Heaney wrote the following:

> I write separately to highlight several concerns that I have with the sentencing guidelines and their application in the Plukey Duke cases. These cases involved twenty-four defendants, the vast majority of whom were convicted of drug trafficking crimes. From my view of the record, it is clear that there is a great disparity in sentence length among defendants with similar degrees of involvement in the drug ring. . . . The sentences imposed on drug traffickers in the Plukey Duke cases illustrate that sentencing disparity continues to exist under the guidelines, that defendants who go to trial pay a heavy premium for their choice, and that the prosecutor largely determines the sentence of the defendant by deciding who to charge, what to charge, and when to charge.
> *Id.* at 1142.

The case of Loren Duke . . . illustrates how the prosecutor's charging decisions affect the sentence imposed. Loren Duke is a 23-year-old nephew of Plukey Duke with one prior burglary conviction. Loren was heavily involved in the drug distribution ring. He frequently acted as a drug courier and was involved in the purchase and delivery of more than thirty-five kilograms of cocaine. . . . The United States Attorney, however, offered Loren Duke a favorable plea bargain . . . and the district court sentenced Loren Duke to twelve months imprisonment.

While it is impossible to make precise comparisons among defendants, Loren Duke's twelve-month sentence should be viewed in relation to the 188-month sentence given to Kim Willis, a 20-year-old man with no prior criminal record. It is clear from the record that Willis' involvement was no more extensive than that of Loren Duke, yet Willis received a sentence nearly sixteen times as long as Loren Duke's. While Loren Duke cooperated with the government, Willis offered to cooperate, but his offer was rejected as not being timely. *Id.* at 1144-45.

The trial against the Plukey Duke defendants took approximately one month to complete. The jury convicted Mr. Willis of the two counts charged against him. Most of the evidence presented by the government during the trial did not pertain to Mr. Willis. However, sufficient evidence showing his guilt was presented. The evidence against Mr. Willis was primarily the following: (1) on three separate occasions, Mr. Willis sold one-fourth ounce quantities of cocaine to a co-defendant; (2) on two separate occasions, Mr. Willis accompanied Monte to Los Angeles, California, to assist him with purchasing cocaine; (3) although Mr. Willis was not physically present when Monte was arrested, the athletic bag Monte was carrying containing the money needed to purchase the cocaine bore the name of Kim Willis; and (4) despite his denial while testifying on his own behalf that he had nothing to do with Monte's attempt to purchase approximately 20 kilograms of cocaine, other witnesses testified that Mr. Willis played a small role in Monte's transaction.

In April 1990, I sentenced Mr. Willis to 15.6 years in prison (188 months). Mr. Willis' conviction was subsequently affirmed in *United States v. Willis*, 940 F.2d 1136 (8th Cir. 1991), *cert. denied, Willis v. United States*, 113 S. Ct. 1411 (1993).

II. Grounds for Mr. Willis' Petition for Commutation of Sentence

A. The Unfairness of the Mandatory–Minimum Sentencing Guidelines

I told Mr. Willis at his sentencing hearing in April 1990, that I did *not* believe he was a major player in the Plukey Duke conspiracy to distribute cocaine. I further told Mr. Willis that I thought he was a bright young man with a good attitude. However, I told Mr. Willis that I was frustrated with the mandatory-minimum sentencing guidelines because the guidelines provided me with little discretion to grant either a downward departure or a departure below the proscribed mandatory-minimum sentence. Finally, before I pronounced Mr. Willis' sentence, I told him that he did *not* deserve the sentence that I was going to impose on him, but I had no other choice except to do what the law required. I then sentenced Mr. Willis to over 15 years in prison (188 months), the *same* sentence I imposed on Serena Nunn.

Presently, I am still not in favor of mandatory-minimum sentences. As you are aware, mandatory-minimum sentences have also been harshly criticized by the American Bar Association, the U.S. Sentencing Commission, Supreme Court Chief Justice William H. Rehnquist and Barry R. McCaffrey who was appointed by you to head the Office of National Drug Control Policy.

In my letter to you on behalf of Ms. Nunn, I stated the following: "If mandatory-minimum sentencing did not exist, no judge in America, including myself, would have ever sentenced Ms. Nunn to 15 years in prison based on her role in the conspiracy, her age, and the fact that she had no prior criminal convictions before the instant offense." I strongly believe that this statement also holds true as to Mr. Willis.

Accordingly, based on the unfairness of the mandatory-minimum sentencing guidelines as they were applied to Mr. Willis, I respectfully request that you grant Mr. Willis' Petition for Commutation of Sentence.

B. Mr. Willis' Significant Rehabilitative Accomplishments While Incarcerated

Prior to his sentencing in April 1990, Mr. Willis told the U.S. Probation Department that he would make constructive use of his incarceration period by going to school and/or learning a trade. At his sentencing hearing, I told Mr. Willis about the importance of turning these negative events in his life into a positive thing during his incarceration period to ensure that he would leave prison with a positive attitude. It is my understanding that over the past 10.5 years, Mr. Willis has exhibited a positive attitude, has come to accept full responsibility for his criminal actions, and has made significant rehabilitative accomplishments.

Today, Mr. Willis is 30 years old and is incarcerated at the Federal Prison Camp in Duluth, Minnesota. Mr. Willis was initially placed in a medium security institution, but through good behavior he earned a transfer to a minimum security camp. It is my understanding that during his incarceration period of 10.5 years, he has received only a few minor disciplinary reports.

In 1991, Mr. Willis completed his GED. Subsequently, Mr. Willis earned certifications in both welding and blue print reading. Additionally, from 1991 to 1998, Mr. Willis participated in several different educational and personal improvement courses offered by the different prisons he was incarcerated in. Then, in 1998, after Mr. Willis was transferred to the Federal Prison Camp in Duluth, MN, he began taking college courses from Lake Superior College in Duluth. Mr. Willis has now completed one year of college in which he made the Dean's List in both the Fall and Spring semesters and has a 3.7 cumulative grade point average. It is Mr. Willis' goal to receive a degree in business.

The most important rehabilitative accomplishment Mr. Willis has made is his participation in the Youth Awareness Program. The Youth Awareness Program permits inmates to leave the prison camp and speak to kids in the community who are the most susceptible to being involved with drugs. In the last year alone, Mr. Willis has made 20 different presentations. I understand that in Mr. Willis' presentation to the kids, he tells them the following:

> when he was a kid involved with drugs he only thought about the material things that he was able to obtain, but never thought about how his actions were responsible for destroying his own community; how as a kid he naively rationalized his drug involvement as being acceptable because he was not forcing anyone to buy the drugs; once you become involved with drugs there are only two ways that you will likely stop, either by imprisonment or by death; criminals like himself must take complete responsibility for the choices they make in life and cannot continue to blame their imprisonment on poverty, lack of education, broken families and/or racial discrimination.

I understand that Mr. Willis, upon his release from incarceration, plans to continue speaking with kids about the dangers of being involved with drugs.

Accordingly, based on the unfairness of the mandatory-minimum sentencing guidelines as they were applied to Mr. Willis, in conjunction with his significant rehabilitative accomplishments while incarcerated, I respectfully request that you grant Mr. Willis' Petition for Commutation of Sentence.

C. The Poor Health of Mr. Willis' Mother

This past June I received a letter from the Willis family requesting that I contact the Federal Bureau of Prisons' on Mr. Willis' behalf to ask them if Mr. Willis could visit his mother in the hospital. Mr. Willis' mother, Wanda, suffers from chronic asthma. The Willis family also provided me with a letter from Mrs. Willis' doctor indicating that she had suffered an asthma attack and was in intensive care. Within the last 18 months, Mrs. Willis has suffered two asthma attacks which required her to be hospitalized in intensive care and placed on a ventilator. Sadly, within the next four years, there is a significant possibility that Mrs. Willis could have a fatal asthma attack. Presently, Mrs. Willis must use a nebulizer every four hours. Mrs. Willis' use of a nebulizer restricts her ability to travel lengthy distances and thus has made it very difficult for her to visit Mr. Willis at the prison camp in Duluth.

Mr. Willis is the youngest of two children. He comes from a tight-knit family and thus his criminal behavior caused great shame to his family. I understand that during the 10.5 years Mr. Willis has been incarcerated, he has worked very hard to make amends with his family for the grief his criminal behavior caused them. Nothing has made the Willis family more happy than to experience their son's transformation from a criminal into a mature and responsible adult. Besides Mr. Willis' educational and technical trade accomplishments, I understand that while incarcerated Mr. Willis has also become an expert in both crocheting and pottery. This expertise has enabled Mr. Willis to give his family members very special gifts for all of the support and encouragement they have provided him during the last 10.5 years.

As a result of his conviction in this case, Mr. Willis has now spent over one-third of his life in prison including all of his twenties. Therefore, upon his release he will face a tough transition back into society. I understand that each member of Mr. Willis' family is dedicated to helping him become successful upon his release from prison. Hopefully, Mrs. Willis' health will allow her to experience her son's release from prison.

Accordingly, based on the unfairness of the

mandatory-minimum sentencing guidelines as they were applied to Mr. Willis, in conjunction with both his significant rehabilitative accomplishments while incarcerated and the poor health of his mother, I respectfully request that you grant Mr. Willis' Petition for Commutation of Sentence.

III. Conclusion

I strongly believe that Mr. Willis' sentence in this case is an example of how the mandatory-minimum sentencing guidelines have not only had an unjust effect on young women like Serena Nunn, but also on young men like Mr. Willis. Based on all of the grounds set forth herein, I strongly support Mr. Willis' Petition for Commutation of Sentence and thus respectfully request that you grant his Petition.

Sincerely,

David S. Doty

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