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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA,	)	File No. 89-cr-94(1)
	)	(DSD)
Plaintiff,	)	
	)	
vs.	)	Minneapolis, Minnesota
	)	February 13, 2018
RALPH CHAVOUS DUKE,	)	9:30 a.m.
	)	
Defendant.	)	
	)	

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BEFORE THE HONORABLE DAVID S. DOTY  
UNITED STATES DISTRICT COURT JUDGE  
**(RESENTENCING HEARING)**

APPEARANCES

For the Plaintiff:	UNITED STATES ATTORNEY JEFFREY S. PAULSEN, AUSA 300 South Fourth Street Suite 600 Minneapolis, Minnesota 55415
For the Defendant:	ROBERT D. RICHMAN LAW ROBERT D. RICHMAN, ESQ. Post Office Box 16643 St. Louis Park, Minnesota 55416
Court Reporter:	CARLA R. BEBAULT, RMR, CRR, FCRR Suite 146 U.S. Courthouse 316 North Robert Street Saint Paul, Minnesota 55101

Proceedings recorded by mechanical stenography;  
transcript produced by computer.



1 provided to the Court. I appreciate them. Have you gone  
2 over that report with Mr. Duke?

3 MR. RICHMAN: Yes, Your Honor.

4 THE COURT: Any issues with the report itself at  
5 this point?

6 MR. RICHMAN: No, Your Honor.

7 THE COURT: Okay. Anything you'd like to say on  
8 behalf of Mr. Duke?

9 MR. RICHMAN: Yes, Your Honor. Thank you.

10 Your Honor, this is a case about compassion and  
11 redemption. Those are not concepts that we typically  
12 discuss during an initial sentencing hearing because at an  
13 initial sentencing hearing the immediacy of the crime is so  
14 great that what we discuss are issues of deterrence and  
15 incapacitation. At an initial sentencing hearing this Court  
16 does not have 30 years of post-offense conduct to consider  
17 as it does in this case, but so it's completely appropriate  
18 in these circumstances for the Court to consider whether  
19 redemption is possible. And in fact the 3553(a) factors  
20 require that this Court consider Mr. Duke as he stands  
21 before the Court today which includes the last 30 years. So  
22 the question before the Court, Your Honor, is whether people  
23 can change.

24 Mr. Duke has been in continual custody since May  
25 17th, 1989, which means that in -- that in three days he

1 will have served exactly 28 years and 9 months. But the  
2 punishment that he has been subject to has been  
3 substantially greater than even that.

4 First, with good time, he has served the  
5 equivalent of a 33-year sentence, 396 months, substantially  
6 more than the 365 months that this Court sentenced Mr. Duke  
7 to on the drug offenses at the time of the sentence  
8 reduction for drugs minus 2.

9 In addition, Your Honor, during that time, as I  
10 have described in my sentencing memorandum, Mr. Duke was  
11 savagely attacked twice. But even more significantly, Your  
12 Honor, I would suggest during those 29 years Mr. Duke has  
13 been serving that time not with the prospect of some end  
14 date that he could count the days down to his eventual  
15 release. Rather, he, until very recently, has been serving  
16 that time with the knowledge that he would die in prison,  
17 which I would suggest makes that time in custody  
18 substantially more difficult, more harsh, than even a normal  
19 29-year or 33-year sentence.

20 But despite that knowledge, Mr. Duke did not fall  
21 into despondency or hopelessness. He has always been  
22 optimistic. He has tried to make productive use of his time  
23 in prison. He has taken a large number of education  
24 classes. He spent over 11 years working in the UNICOR  
25 program. He was certified as a solderer after completing a

1 120-hour program through the Madison Area Technical College.  
2 He has maintained close ties to his family, as is  
3 demonstrated by the number of people in the courtroom today,  
4 as well as the many letters that were submitted to the  
5 Court.

6 Even more impressive, I would suggest, Your Honor,  
7 Mr. Duke has taken it upon himself to mentor many of the  
8 young black men who he has been in custody with who he sees  
9 on the wrong path. Even most recently at the Sherburne  
10 County Jail he has been in custody with some young men who  
11 were involved in substantial gang activities and a gun  
12 conspiracy. Mr. Paulsen is very familiar with some of them  
13 because he prosecuted them. And Mr. Duke has seen them  
14 strutting in the courtroom and talking their nonsense.  
15 These are men who, if left to their own devices, would in  
16 all likelihood be dead by age 30. And Mr. Duke has taken it  
17 upon himself to call them on their conduct and to tell them  
18 that they are acting like fools. And he is someone who has  
19 the gravitas to actually be listened to.

20 Now, I don't know whether his intervention will  
21 have an effect, but if he is able to turn even one of these  
22 men onto a better course it will be worthwhile. And whether  
23 he is successful or not, it speaks volumes to who Mr. Duke  
24 is as a person today.

25 Your Honor, in the 29 years since Mr. Duke was

1 last before this Court, as the Court knows there has been a  
2 revolution in sentencing. The Sentencing Guidelines are no  
3 longer mandatory and in fact in drug cases something like  
4 two-thirds of offenders receive below Guideline sentences.  
5 There is widespread bipartisan acknowledgment that drug  
6 sentences are too long. There are bills pending in both the  
7 House and the Senate proposed on a bipartisan basis that  
8 would reduce the mandatory life sentence for drug offenders  
9 to 25 years. Those are cases which involve repeat offenders  
10 or murders, and yet Congress is looking into the possibility  
11 of reducing the mandatory life sentence in those cases.

12 If any of that legislation passes, life sentences  
13 in drug cases will become even more rare than they already  
14 are today. According to the Sentencing Commission,  
15 approximately 4,400 inmates currently in BOP custody are  
16 serving life sentences. That was as of 2013, which amounts  
17 to two and a half percent of the BOP population. And  
18 according to the Sentencing Commission, in virtually every  
19 single one of those cases there were one or more deaths that  
20 resulted from the criminal enterprise. And so Mr. Duke, if  
21 this Court sentences him to life as the Government is  
22 suggesting, would stand alone as a first offender in a case  
23 that we have no evidence of any deaths.

24 Your Honor, Mr. Duke is now 72 years old. His  
25 health is in serious decline, as I summarized in my

1 sentencing memorandum. He suffers from diabetes, high blood  
2 pressure, osteoarthritis, back problems, neck problems,  
3 Bells palsy, and more. And as the Inspector General has  
4 determined, the BOP is not equipped to deal with the aging  
5 prison population. They are not equipped to provide  
6 geriatric care or palliative care.

7 This is someone, Mr. Duke, who is no longer a  
8 danger to anyone and this is where compassion comes into  
9 play. Mr. Duke has forfeited the last 29 years of freedom  
10 as a result of his offense conduct but he should not be  
11 condemned to die in a prison cell. If this Court accepts  
12 the Government's recommendation, it will be announcing that  
13 Mr. Duke is someone who is beyond redemption. That  
14 notwithstanding 30 years of excellent conduct, forgiveness  
15 is simply not possible in the federal system.

16 Your Honor, the large number of supporters who are  
17 here and that who wrote letters to the Court will attest to  
18 the fact that Mr. Duke is not beyond redemption. That he  
19 has changed. They are supportive. They are ready to take  
20 him in to support him and help him make the adjustment to  
21 freedom if this Court were to permit it.

22 During the 29 years that he has been in custody,  
23 there has been two new generations in Mr. Duke's family. He  
24 has grandchildren and great-grandchildren, most of whom he  
25 has never met. And his desires, his goals at this point are

1 very simple, which are simply to be able to spend what  
2 little time he has left with his family.

3 He has demonstrated over the last 29 years that  
4 people can change and a sentence of time served, a 33-  
5 year -- the equivalent of a 33-year sentence will in no way  
6 minimize the seriousness of the offense. And for those  
7 reasons, Your Honor, we ask the Court to impose a sentence  
8 of time served.

9 THE COURT: All right. Thank you.

10 Mr. Duke, you get a chance to address the Court  
11 this morning also as you did the last time you were before  
12 us. Before you do, I want to tell you that I have read all  
13 of the letters. I don't know if you have seen them.

14 Mr. Richman told you about them, but there have been a  
15 number of letters sent to me on your behalf from not only  
16 your family but other people, other people you worked with  
17 and so forth. And I've read all of them. Some of them are  
18 very, very poignant, very heart touching to me. So I've  
19 read those.

20 I've read all the materials also that Mr. Richman  
21 supplied to me about what you have done in prison and I  
22 commend you for all of that. I think you have tried as hard  
23 as you could to make it in prison and I think you are making  
24 it in prison and I commend you for all that you have done.

25 But with that in mind, why don't you, whatever you

1 have to say, go ahead, please, if you would.

2 THE DEFENDANT: Okay. Your Honor, I would like to  
3 apologize to my family and to the Court for the crimes I  
4 have committed. I recognize the damage that I have caused  
5 to my family and the community. I know the damage drugs can  
6 do because I myself was addicted to drugs at the time of my  
7 offense. I take full responsibility for the crimes that I'm  
8 here for and that I spent 30 years in custody for.

9 I know that my apology comes 29 years too late. I  
10 cannot change the past or undo the many mistake that I've  
11 made. I have lived my mistakes every day for the last 29  
12 years. I have lived with the birth of each of my  
13 grandchildren, my great grandchildren, while I have been  
14 locked up. I have lived with the death of my mother, my  
15 brother, my sister, and so many other family members. I  
16 cannot be there for them when they passed to hold their hand  
17 and say good-bye. Although I have tried to parent my  
18 children from prison, I have not been there for them like I  
19 should have been.

20 I know that I have no one to blame but myself.  
21 Believe me, Your Honor, I have had plenty of time to think  
22 of all my mistakes. As much as I would like to, I cannot  
23 undo the crimes I committed in the past. All I can do is  
24 change my behavior and commit myself to a positive path  
25 until the All Mighty calls my name.

1 I've tried to make positive use of my time while  
2 incarcerated. I enrolled in numerous educational classes  
3 and was also hired in the UNICOR program, also known as  
4 Prison Industries. In my first month I was named employee  
5 of the month. I enrolled in technical college where I was  
6 trained in reading blueprints for cable building for United  
7 States Army tanks and jumper cables for jets and etcetera.  
8 I was certified in soldering computer chips, internal  
9 component parts.

10 After graduating I continue to advance in UNICOR  
11 assuming more complex responsibilities. I am now 72 years  
12 old. I have many mental problems -- medical problems.  
13 Mental ones, too, and I know I do not have many years left.  
14 Until recently I always knew I'd never again see freedom,  
15 but I remain positive and still work to better myself.

16 Now I'm asking you to permit me to spend my final  
17 years in the loving care of my remaining family. I'm not  
18 the same person who stood before you 28 years ago believing  
19 I was above the law. I have tried to show with my behavior  
20 for nearly three decades that I have changed. Over the  
21 years I have seen many young men in prison who have made the  
22 same mistakes as I have made. I believe that if you grant  
23 my freedom, I can be a positive influence on others to teach  
24 them what I have learned and hopefully keep them from making  
25 the same mistakes. And I assure the Court that if you

1 release me that I will never be back before the Court for  
2 violating the law. Thank you.

3 THE COURT: All right. Thank you.

4 Mr. Paulsen, on behalf of the Government.

5 MR. PAULSEN: The United States of America is  
6 seeking a life sentence because of the nature of the crime  
7 that was committed a long time ago. Mr. Duke is not an  
8 ordinary drug defendant. He was a kingpin and he corrupted  
9 a lot of people, including some family members. But he was,  
10 frankly, probably the biggest drug dealer this District has  
11 ever seen. I have been doing this work for almost 30 years  
12 and I have never seen a bigger one. I consulted with the  
13 two original case agents who are in the courtroom, Mike  
14 Carey and Jeff Burchett. Between them they probably have  
15 about 60 or 70 years of law enforcement, mostly in drugs,  
16 and they never saw a bigger defendant than Mr. Duke. Jon  
17 Hopeman, the original prosecutor is here, and he would say  
18 that Mr. Duke was the biggest drug dealer he ever  
19 prosecuted.

20 The argument is made that the times have changed  
21 and we're more lenient towards drug dealers now than we were  
22 in the past, and I can see there have been some changes.  
23 But the reality is if we were using today's Guideline  
24 Manual, I did a little breakdown of what the Guidelines  
25 would be if I could pass that up to the Court?

1 THE COURT: You may. Thank you.

2 MR. PAULSEN: He would -- if being sentenced under  
3 the current Guideline Manual, Mr. Duke literally would be  
4 off the charts. He would have a Base Offense Level of 36,  
5 because his minimum conservative estimate of the cocaine he  
6 distributed was 173 kilograms. It was a lot more, but  
7 that's what the PSR says so we'll use that.

8 He'd have the -- and by the way, back in 1988 or  
9 1990 when he was sentenced, that Guideline Manual only went  
10 up to 50 kilograms. The Guidelines Commission hadn't even  
11 really envisioned that people would distribute more than 50  
12 kilograms back then but Mr. Duke had more than three times  
13 that much.

14 And there's a 2-level firearm enhancement which  
15 was in existence then, but there are two new enhancements  
16 that weren't existing -- in existence then but would now be  
17 applied. That is the premises enhancement, using his  
18 fortified compound in Delano as a base of operations. The  
19 importation enhancement. His role proven at trial of  
20 actually ordering drugs out of South America and being  
21 instrumental in bringing them across the border. That  
22 didn't exist back then. And then you still have the plus 2  
23 for obstruction of justice and plus 4 for aggravating role.  
24 He would be Total Offense Level of 48. The book only goes  
25 up to level 43, and 43 is a life sentence.

1           So although it is true there have been some  
2 changes, when it comes to kingpins like Mr. Duke the law is  
3 not more lenient. The law is stricter now. Of course he  
4 can't get all those enhancements because it's ex post facto,  
5 but I'm just using that as an illustration to refute the  
6 notion that the law is more lenient towards people like  
7 Mr. Duke.

8           And in terms of the life sentence, I briefed that  
9 in a reply to Mr. Richman's pleading. As late as 2013,  
10 which is the most recent year we have data for, life  
11 sentences are still being imposed in drug cases; 64 of them  
12 in 2013. And the average drug quantity in those 64 people  
13 who got life in 2013 was I think -- well, I know that  
14 Mr. Duke's drug quantity is four and a half times the median  
15 amount that those people were sentenced for.

16           So again, Your Honor, it's not a choice between  
17 appropriate punishment and redemption. You don't have to  
18 reject the idea of redemption in order to give the same  
19 sentence you gave before, but that's the sentence I'm asking  
20 for because of the nature of the crime.

21           THE COURT: All right. Why don't you come back  
22 up, Mr. Richman and Mr. Duke, if you would.

23           As you all know, I must make some findings of fact  
24 in a case like this but there were no objections to the  
25 factual statements contained in the Presentence

1 Investigation Report and the Court is going to adopt those  
2 statements as its findings of fact.

3 I must make an application of the Guidelines to  
4 the facts. No questions have arisen regarding the  
5 application of the Guidelines to the facts by the probation  
6 officer either and, therefore, the Court will determine that  
7 the applicable Guidelines are as follows:

8 A Total Offense Level of 42 with a Criminal  
9 History Category of I might lead to an imprisonment range of  
10 360 months to life; supervised release of five years; a fine  
11 range of \$25,000 to \$4 million; and a special assessment of  
12 \$350.

13 Now, the statutes under which Defendant has been  
14 convicted under Counts 2 and 32 set a minimum term of  
15 imprisonment of 20 years, and a maximum term of imprisonment  
16 of life; a maximum fine of \$4 million; and a maximum term of  
17 supervised release of life.

18 The statutes under which Defendant has been  
19 convicted under Counts 4 through 8 set a minimum term of  
20 imprisonment of 5 years and a maximum term of imprisonment  
21 of 40 years; a maximum fine of \$2 million; and a maximum  
22 term of supervised release of life.

23 Mr. Duke, the jury found you guilty on Counts 2, 4  
24 through 8, and Count 32 of the Indictment. And therefore,  
25 it is adjudged that you are committed to the custody of the

1 United States Bureau of Prisons for imprisonment for a term  
2 of life which consists of a term of life on Count 2 and 32,  
3 and a term of 40 years on Counts 4 through 8. The 40-year  
4 term on Counts 4 through 8 shall be served concurrent to one  
5 another and to the term of life on Counts 2 and 32.

6 Further, it is ordered that should any further  
7 changes be made to your sentence that would somehow enable  
8 you to be released from prison, I also impose a term of  
9 supervised release of five years on each count to be served  
10 concurrently under the following conditions:

11 First, that you must report to the U.S. Probation  
12 and Pretrial Services office in the district in which you  
13 will be released within 72 hours of release from custody of  
14 the Bureau of Prisons unless the probation officer instructs  
15 you to report to a different probation office or within a  
16 different timeframe.

17 Second, you shall not commit any crimes, federal,  
18 state, or local.

19 Third, you shall not illegally possess a  
20 controlled substance. You shall refrain from any unlawful  
21 use of a controlled substance. You shall submit to one drug  
22 test within 15 days of release from imprisonment and at  
23 least two periodic drug tests thereafter as determined by  
24 the Court.

25 Fourth, you shall not own, possess, or have access

1 to a firearm, ammunition, destructive device, or any other  
2 dangerous weapon.

3 Fifth, you shall cooperate in the collection of  
4 DNA as directed by the probation officer.

5 You shall also abide by the standard conditions of  
6 supervised release that have been adopted by this Court  
7 including the following special conditions:

8 First, you shall submit to substance abuse testing  
9 as approved and directed by the probation officer.

10 Second, you shall submit your person, residence,  
11 office, vehicle, or an area under your control to a search  
12 conducted by a United States probation officer or supervised  
13 designee at a reasonable time and in a reasonable manner  
14 based upon a reasonable suspicion of contraband or evidence  
15 of a supervision violation. You shall warn any other  
16 residents or third parties that the premises and areas under  
17 your control may be subject to search pursuant to these  
18 conditions.

19 Third, you shall provide the probation officer  
20 access to any requested financial information including  
21 credit reports, credit card bills, bank statements and  
22 telephone bills.

23 The Court originally imposed a fine of \$400,000  
24 which was later reduced to \$100,000. Your obligation to pay  
25 the fine ceased on July 24th, 2010 and the Court imposes no

1 additional fine today. However, pursuant to 18 United  
2 States Code, Section 301, you are obligated to pay to the  
3 United States a special assessment of \$350, but you have  
4 satisfied that obligation at the time of the original  
5 sentencing in this matter.

6 Now the Court finds that the sentence imposed is  
7 appropriate and reasonable in light of the consideration set  
8 forth at 18 United States Code, Section 3553(a). The Court  
9 has taken into account the nature and circumstances of the  
10 instant offenses, as well as the history and characteristics  
11 of the Defendant and finds that the sentence imposed is  
12 sufficient but not greater than necessary to afford adequate  
13 deterrence to future criminal conduct.

14 The Court has also read and taken into  
15 consideration the letters submitted on behalf of the  
16 Defendant urging the Court to set him free today. Although  
17 those letters are heartfelt and compelling, they cannot undo  
18 the serious crimes committed by the Defendant over the  
19 course of many years during which he not only flooded his  
20 community with drugs but also corrupted numerous young  
21 people, many of whom were his family. And although the  
22 trial was years ago, the Court well remembers the details of  
23 this case and the staggering magnitude of the criminal  
24 activity involved.

25 The Court commends the Defendant for his

1 rehabilitative efforts while in prison and sincerely hopes  
2 that the Defendant has indeed changed, but the Court simply  
3 cannot conclude that he should be released from prison.

4 Now, Mr. Duke, you do have a right to appeal this  
5 case and if -- this sentence, I should say, and you have 14  
6 days from today to do so. You talk with Mr. Richman. If he  
7 says you should appeal, make sure that he files a Notice of  
8 Appeal within that 14 days or you lose that right. Do you  
9 understand?

10 THE DEFENDANT: (Nodded head affirmatively.)

11 THE COURT: Also, if you cannot afford the cost of  
12 a lawyer like Mr. Richman or the cost of an appeal, the  
13 Government, if you apply and qualify, the Government will  
14 provide a lawyer and will also pay the cost and expenses of  
15 the appeal. Do you understand those rights you have?

16 THE DEFENDANT: (Nodded head affirmatively.)

17 THE COURT: Is there any request for designation?  
18 I'm thinking Rochester might be appropriate.

19 THE DEFENDANT: I'd rather go to Rochester.

20 MR. RICHMAN: Yes, Your Honor.

21 THE COURT: I'm going to recommend Rochester for a  
22 couple of reasons. Number one, they have fine medical  
23 facilities there and they can take care of the things that  
24 are troubling medically. In addition, of course, it's close  
25 to the Twin Cities and so I think it would allow visitation

1 a lot better than where you have been in the past.

2 Anything you want to say, Mr. Richman or Mr. Duke?

3 MR. RICHMAN: He was saying that Rochester had  
4 been recommended previously but the Bureau of Prisons did  
5 not abide by that recommendation in the past.

6 THE COURT: Well, you know, I say this all the  
7 time. Mr. Richman will tell you this. Judges will  
8 recommend where a person should go. I sincerely hope that  
9 you can be designated to Rochester but the Bureau of Prisons  
10 does what they do, and you know that, Mr. Duke, and you  
11 probably know it better than I do. And so I hope they will  
12 listen to the Judge, I hope they will listen to you, and I  
13 hope you get that designation but I cannot guarantee a  
14 thing.

15 Is there anything else that should come before the  
16 Court this morning?

17 MR. PAULSEN: Nothing from the Government.

18 MR. RICHMAN: Your Honor, I understand the Court's  
19 ruling and for purposes of preserving the issue on appeal, I  
20 want to make clear that we object to the Court's sentence as  
21 being substantively unreasonable and it's our position that  
22 the Court has failed to adequately consider the 3553(a)  
23 factors.

24 THE COURT: All right. And the record will so  
25 note.

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MR. RICHMAN: Thank you, Your Honor.

THE COURT: Anything else?

MR. RICHMAN: No, Your Honor.

THE COURT: The Court is going to stand in recess.

Thank you.

(Court adjourned at 10:01 a.m.)

\* \* \*

I, Carla R. Bebault, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/Carla R. Bebault  
Carla Bebault, RMR, CRR, FCRR