

February 9, 2016

The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: Weldon Angelos Clemency Petition

Dear Mr. President:

I write you as the judge who sentenced Weldon Angelos to a 55-year mandatory minimum prison term for non-violent drug offenses. In 2004 when I was forced to impose that sentence, I wrote a lengthy opinion explaining why that sentence was “unjust.” *United States v. Angelos*, 345 F. Supp. 2d 1227, 1230 (D. Utah 2004). Indeed, at the time, I wrote that “to correct what appears to be an unjust sentence, the court also calls on the President—in whom our Constitution reposes the power to correct unduly harsh sentences—to commute Mr. Angelos’ sentence to something that is more in accord with just and rational punishment.” *Id.* Now that Mr. Angelos has served more than twelve years in prison, I once again want to call on you to commute his sentence. I thus write in strong support of a clemency petition that he has filed.

In looking back on the case, it was one of the most troubling that I ever faced in my five years on the federal bench. I described the case in detail in the opening paragraphs of my opinion on the case, which may be useful to recount to put the case in context:

Defendant Weldon Angelos stands now before the court for sentencing. He is a twenty-four-year-old first offender who is a successful music executive with two young children. Because he was convicted of dealing marijuana and related offenses, both the government and the defense agree that Mr. Angelos should serve about six to eight years in prison. But there are three additional firearms offenses for which the court must also impose sentence. Two of those offenses occurred when Mr. Angelos carried a handgun to two \$350 marijuana deals; the third when police found several additional handguns at his home when they executed a search warrant. For these three acts of possessing (not using or even displaying) these guns, the government insists that Mr. Angelos should

essentially spend the rest of his life in prison. Specifically, the government urges the court to sentence Mr. Angelos to a prison term of no less than 61 ½ years—six years and a half (or more) for drug dealing followed by 55 years for three counts of possessing a firearm in connection with a drug offense. In support of its position, the government relies on a statute—18 U.S.C. § 924(c)—which requires the court to impose a sentence of five years in prison the first time a drug dealer carries a gun and twenty-five years for each subsequent time. Under § 924(c), the three counts produce 55 years of additional punishment for carrying a firearm.

The court believes that to sentence Mr. Angelos to prison for the rest of his life is unjust, cruel, and even irrational. Adding 55 years on top of a sentence for drug dealing is far beyond the roughly two-year sentence that the congressionally-created expert agency (the United States Sentencing Commission) believes is appropriate for possessing firearms under the same circumstances. The 55-year sentence substantially exceeds what the jury recommended to the court. It is also far in excess of the sentence imposed for such serious crimes as aircraft hijacking, second degree murder, espionage, kidnapping, aggravated assault, and rape. It exceeds what recidivist criminals will likely serve under the federal “three strikes” provision.

345 F. Supp. 2d at 1230.

Angelos’ sentence was hard to defend when it was imposed. Now I am pleased to see that the Justice Department has begun a review of some lengthy federal prison sentences – including sentences like the one Angelos is serving. I know that the Justice Department is prioritizing certain kinds of sentences for a commutation recommendation. It appears to me that Mr. Angelos meets all of the criteria for a commuted sentence. In particular, my understanding is that under policies in place today, Mr. Angelos would not have been charged with the “stacking” § 924(c) counts that forced to me to sentence him to 55 years in 2004. Of course, if my hands had not been tied by these draconian provisions, I would have imposed a substantially lower sentence – a sentence that would have likely led to him having already been released.

I know that Mr. Angelos’ attorneys have highlighted reasons why, from Mr. Angelos’ perspective, a commutation is appropriate. I want to highlight an aspect of his case that might otherwise be overlooked. So what, some may say, if he spends more years in prison than might be theoretically justified? It is common wisdom that “if you can't do the time, don't do the crime.”

The problem with this simplistic position is that it overlooks other interests that are inevitably involved in the imposition of a criminal sentence. I resigned my position as a federal judge to return to law teaching – and to work on behalf of crime victims. Of course, in some circumstances, lengthy prison sentences can help protect crime victims. But unduly long sentences can be harmful from a crime victims’ perspective. For example, crime victims expect that the penalties the court imposes will fairly reflect the harms that they have suffered. When the sentence for actual violence inflicted on a victim is dwarfed by a sentence for carrying guns to several drug deals, the implicit message to victims is that their pain and suffering counts for less than some abstract “war on drugs.”

When I sentenced Mr. Angelos in 2004, I tried to make the point directly.

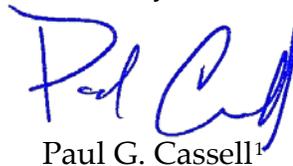
[Concern about crime victims] is no mere academic point, as a case from this court's docket will illustrate. Earlier today, shortly before Mr. Angelos' hearing, the court imposed sentence in *United States v. Visinaiz*, 344 F.Supp.2d 1310 (D.Utah 2004), a second-degree murder case. There, a jury convicted Cruz Joaquin Visinaiz of second-degree murder in the death of 68-year-old Clara Jenkins. On one evening, while drinking together, the two got into an argument. Ms. Jenkins threw an empty bottle at Mr. Visinaiz, who then proceeded to beat her to death by striking her in the head at least three times with a log. Mr. Visinaiz then hid the body in a crawl space of his home, later dumping the body in a river weighted down with cement blocks. Following his conviction for second-degree murder, Mr. Visinaiz came before the court as a first-time offender for sentencing. The Sentencing Guidelines require a sentence for this brutal second-degree murder of between 210 to 262 months. The government called this an “aggravated second-degree murder” and recommended a sentence of 262 months. The court followed that recommendation. Yet on the same day, the court is to impose a sentence of 738 months for a first-time drug dealer who carried a gun to several drug deals!? The victim's family in the Visinaiz case—not to mention victims of a vast array of other violent crimes—can be forgiven if they think that the federal criminal justice system minimizes their losses. No doubt § 924(c) is motivated by the best of intentions—to prevent criminal victimization. But the statute pursues that goal in a way that effectively sends a message to victims of actual criminal violence that their suffering is not fully considered by the system.

345 F. Supp. 2d 1251-52.

The underlying problem in the Angelos case can be traced back to the “stacking” feature of the crimes for which Angelos was convicted. As illustrated by his case, he was able to rack up decades of prison time by possessing a gun in several separate criminal offenses, even where those offenses are all essentially part of the same episode. This problem can be traced to the Supreme Court’s decision in *Deal v. United States*, 508 U.S. 129 (1993), which construed the statute as stacking penalties even for crimes committed over the course of a few days. This letter does not delve into the merits of the Court’s jurisprudence on legislative intent and the conclusion it produced in *Deal* based on the ostensible plain meaning of the statute. Instead, my limited point here is that the Supreme Court’s interpretation has produced a fearsome mandatory minimum statute that is not a true recidivist law. This stacking aspect cannot be justified on grounds that it is sending a message to recidivists who did not learn a lesson, given that a defendant (like Angelos) will not have been convicted and imprisoned in the time between § 924(c) violations.

For these and other reasons, § 924(c) should be amended to be a true recidivist law, with Congress overturning *Deal*. In other words, in future cases, “stacking” 924(c)’s should be unstacked. See Erik Luna & Paul G. Cassell, *Mandatory Minimalism*, 32 *Cardozo L. Rev.* 1 (2010). But with regard to past sentences imposed – like Angelos’ – the question is whether more immediate action is required. In 2004, when I sentenced Mr. Angelos, I thought his sentence was “cruel, unjust, and irrational.” *Id.* at 1230. I am even more firmly convinced of that conclusion today, when the Angelos case has been widely discussed as a clear example of an unduly harsh sentence. Because his appeals have been exhausted, the only solution for Angelos is a Presidential commutation. I urge you to swiftly commute his sentence.

Sincerely,



Paul G. Cassell¹

Cc: W. Neil Eggleston, White House Counsel
Robert Zauzmer, Acting Pardon Attorney
Sally Yates, Deputy Attorney General
Mark W. Osler, Esq., Counsel to Mr. Angelos

¹ The views expressed in this letter are my own, not the University of Utah’s.