

H9s1toms

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 336 (BCM)

5 SCOTT TOM,

6 Defendant.

Sentencing

7 -----x  
8 New York, N.Y.

September 28, 2017  
10:09 a.m.

9  
10 Before:

11 HON. BARBARA MOSES,

12 Magistrate Judge

13  
14 APPEARANCES

15 JOON H. KIM  
16 Acting United States Attorney for the  
17 Southern District of New York

18 BY: ANDREW K. CHAN  
19 Assistant United States Attorney

20 JAMES D. HENDERSON, ESQ.  
21 Attorney for Defendant  
22  
23  
24  
25

H9s1toms

1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for  
3 the record.

4 MR. CHAN: Good morning, your Honor. Andrew Chan here  
5 on behalf of the United States.

6 THE COURT: Good morning, Mr. Chan.

7 MR. HENDERSON: And Jim Henderson on behalf of Scott  
8 Tom, who is present in court, your Honor.

9 THE COURT: Good morning, Mr. Henderson, and good  
10 morning, Mr. Tom.

11 Mr. Tom, you may remember me. I'm Judge Moses. On  
12 May 31<sup>st</sup> of this year, I accepted your guilty plea to a  
13 one-count information, which charged you with being an  
14 accessory after the fact to the interstate transmission of  
15 gambling information, in violation of Title 18 of the United  
16 States Code Sections 1084 and 3. And you are now here for your  
17 sentencing.

18 I will ask both counsel, is there any reason why  
19 sentence should not be imposed at this time?

20 MR. CHAN: No, your Honor.

21 MR. HENDERSON: No, your Honor. Thank you.

22 THE COURT: Very well.

23 I have received a copy of the presentence  
24 investigation report dated August 24<sup>th</sup> as revised. I have  
25 received along with it two addenda and the sentencing

H9s1toms

1 recommendation from the court's probation office. I have also  
2 received a sentencing memorandum from Mr. Tom's lawyer,  
3 Mr. Henderson, dated September 20<sup>th</sup> of this year. It  
4 includes a letter to the Court from Mr. Tom. It also includes  
5 12 letters of support from the following individuals: Winston  
6 Baldwin Spencer, the former prime minister of Antigua and  
7 Barbuda; John Maginley, a former minister of tourism in that  
8 nation; Ross Alan Bloomfield; Erin Beckley; Peter Barovich;  
9 Hilt Tatum IV; Oscar Hilt Tatum III; Pedro Corbin; Robert  
10 Stephen Shoul; Richard D'Ornellas; Paul Leggett; and Olan  
11 Pelle. And I have read each of those letters.

12 I have not received a written submission from the  
13 government. Is that correct, Mr. Chan?

14 MR. CHAN: Yes, that is correct, your Honor.

15 THE COURT: All right. Have both sides seen the  
16 materials that I just mentioned?

17 MR. HENDERSON: Yes, your Honor.

18 MR. CHAN: Yes, your Honor.

19 THE COURT: Are there any other materials that the  
20 parties intended for me to review in contemplation of today's  
21 proceeding?

22 MR. CHAN: No, your Honor.

23 MR. HENDERSON: No, your Honor.

24 THE COURT: All right. Mr. Henderson, have you  
25 discussed the presentence investigation report with your

H9s1toms

1 client?

2 MR. HENDERSON: I have, your Honor.

3 THE COURT: All right. And Mr. Tom, you've had an  
4 opportunity to discuss it with your lawyer?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are there any unresolved objections as to  
7 any factual statements or any of the guideline calculations  
8 contained in the presentence investigation report?

9 MR. HENDERSON: No. We only had one minor problem  
10 with the report, which is not of particular relevance to  
11 today's proceeding. It's a section in there that indicated  
12 that five years ago Mr. Tom had smoked some marijuana or  
13 something, which originally led the Court at the bail hearing  
14 to put in a drug testing provision. Mr. Tom has informed me  
15 that that is incorrect information. He has never used  
16 marijuana. Like I say, it's not particularly relevant to  
17 today's proceeding. As your Honor may recall, he passed  
18 something like 10 or 12 consecutive drug tests, and your Honor  
19 actually signed an order relieving him of the drug testing  
20 obligation based upon a recommendation from pretrial services  
21 that it was unnecessary for this defendant. So as I say, it's  
22 not relevant to the sentencing, but he did want me to bring  
23 that to your attention because he believes it to be incorrect.

24 THE COURT: Well, I think you are not so much asking  
25 me to resolve the factual issues --

H9s1toms

1 MR. HENDERSON: No.

2 THE COURT: -- but you are asking me to confirm, which  
3 I will do, that a ruling is unnecessary because the matter will  
4 not affect sentencing.

5 MR. HENDERSON: That's correct.

6 THE COURT: Mr. Chan, any unresolved objections from  
7 the government?

8 MR. CHAN: No, your Honor.

9 THE COURT: All right. Having read the report and no  
10 objection having been made, I will accept and adopt its factual  
11 statements and its analysis of the application of the  
12 Sentencing Guidelines. I also note that the report is  
13 consistent with the defendant's plea agreement, which provides  
14 for a Sentencing Guidelines range of zero to six months of  
15 imprisonment.

16 With respect to the Sentencing Guidelines  
17 calculations, I find that the base offense level is 6, that  
18 because the defendant has demonstrated acceptance of  
19 responsibility, the offense level is decreased by two levels,  
20 pursuant to Section 3E1.1(a) of the guidelines. Accordingly,  
21 the defendant's total offense level is a 4. With a criminal  
22 history category of I, this places the guidelines range, as  
23 previously discussed, at zero to six months' imprisonment and a  
24 fine range under the guidelines of 250 to \$5,000.

25 Mr. Chan, does the government wish to be heard with

H9s1toms

1 respect to sentence?

2 MR. CHAN: Just briefly, your Honor.

3 The government is recommending a sentence within the  
4 guidelines range of zero to six months' imprisonment, and as  
5 always, I think it's important at the outset to begin with the  
6 proposition that this was in fact a serious crime, and not an  
7 insignificant one. The defendant participated in a scheme to  
8 hide the payments, gambling payments from an overseas location.  
9 He advised the company on how to successfully avoid law  
10 enforcement detection. And while it's true that the defendant  
11 has pleaded to being accessory after the fact in this crime, I  
12 don't think that it would be accurate to say that his role was  
13 an insignificant one. He was one of the original founders of  
14 the gambling website, and he was closely affiliated with some  
15 of the ongoing employees that were at this company, and so for  
16 him to continue to devise ways to allow this company to  
17 disguise their gambling transactions is in fact a very serious  
18 crime and one that's worthy of him being in this courtroom  
19 today to be sentenced.

20 That being said, turning next to the defendant's  
21 personal characteristics and the need for imprisonment, we  
22 agree, your Honor, that somewhere within that range of zero to  
23 six months is appropriate here. We understand that the  
24 defendant doesn't have any criminal history. We understand,  
25 based on the presentence report, that there seems to be a very

H9s1toms

1 low likelihood of re-offense for this defendant. He's also  
2 going to be paying a significant amount of money in forfeitures  
3 to the United States. And so that's why we do think, your  
4 Honor, that a sentence within that range, between zero to six  
5 months of imprisonment, would be appropriate here and in the  
6 interests of justice.

7 THE COURT: A couple of questions, if you don't mind,  
8 Mr. Chan. As you know, the recommendation is time served plus  
9 supervised release. Has the defendant served any time?

10 MR. CHAN: Your Honor, my understanding is that in  
11 connection with being processed by the Marshals for this case,  
12 the Court could sentence the defendant to time served which  
13 would be in fact the amount of time that the defendant had to  
14 be in the custody of the Marshals prior to being presented in  
15 the case.

16 THE COURT: So effectively part of a day.

17 MR. CHAN: That's right.

18 THE COURT: And if I were to impose a term of  
19 supervised release, how would the defendant be supervised given  
20 that, as I understand it, he will be obligated to leave the  
21 country?

22 MR. CHAN: Yes, your Honor. I think my understanding  
23 is that in cases like this one, where it's likely that a  
24 defendant is going to be leaving the country, the term of  
25 supervised release is a conditional one. That is, if the

H9s1toms

1 defendant at any time is in the country during that term of  
2 supervised release, he would be required to report to the  
3 probation office and to serve that term of supervised release.

4 THE COURT: All right. You mentioned, Mr. Chan, in  
5 your oral presentation, that the defendant assisted the  
6 gambling website -- Absolute Poker, I believe is the name of  
7 it -- with evading US law in connection with its financial  
8 transactions. In what way?

9 MR. CHAN: Your Honor, I don't have exact information.  
10 I unfortunately was not the primary AUSA on the case. What I  
11 do understand is that one of the goals of these internet  
12 gambling websites, after the entry of new laws passed in the  
13 United States, was to disguise transactions so that law  
14 enforcement wouldn't be able to tell from various wiring and  
15 banking transactions what was in fact a funds transfer that was  
16 really gambling proceeds.

17 THE COURT: I understand that as well, and I  
18 understand that some of the co-defendants in this matter, some  
19 of them who have pleaded guilty and been sentenced by other  
20 judges were involved in that aspect of the enterprise. It's  
21 less clear to me what this defendant's personal involvement was  
22 in those particular issues. So I thought perhaps you would  
23 have some additional information for me.

24 MR. CHAN: I unfortunately do not, your Honor. I  
25 apologize.

H9s1toms

1 THE COURT: All right. So let me turn to  
2 Mr. Henderson. Is there anything that you would like to say on  
3 your client's behalf with respect to sentencing?

4 MR. HENDERSON: Yes, your Honor. Thank you.

5 First of all, I'll probably start out by addressing a  
6 couple of questions that you addressed to the other counsel. I  
7 had a similar case in front of Judge Denny Chin here --

8 THE COURT: Must have been a while ago.

9 MR. HENDERSON: It was several years ago. -- in which  
10 he sentenced an out-of-the-country violator of 18 U.S.C.  
11 Section 1955, the federal gambling statute, to time served, and  
12 he computed it by the two hours he had served in the Marshals'  
13 lockup being photographed and fingerprinted. When he came into  
14 the country, they arrested him, they took him to the Marshals  
15 lockup, they did that, and he came and made bail. So I assume  
16 that that's the kind of thing that the probation officer had in  
17 mind here. So it has been done in this circuit, and that was  
18 the way it was done.

19 I've also had a case that was transferred, gambling  
20 case transferred from Washington -- from here to Washington, DC  
21 because they had a corresponding indictment for the same  
22 violation there, which involved an out-of-the-state  
23 defendant -- out-of-the-country defendant who was sentenced to  
24 a term of supervised release, and it was handled precisely as  
25 counsel has indicated, with the added proviso that she was

H9s1toms

1 required to call in I think once every two weeks to the  
2 probation officer here to indicate that she hadn't been in  
3 trouble or hadn't been arrested and everything, and she was  
4 actually terminated early.

5 So those are the way I've seen those kind of things  
6 handled in the past.

7 With regard to your question about this defendant's  
8 involvement in the financial end of the affairs of this  
9 company, the answer is, he wasn't. He had no involvement.  
10 Some of the other people were. If you look at the original  
11 indictment, even before some of the facts came clear that led  
12 to the misdemeanor disposition, you'll see he was named in none  
13 of the counts that involved any of the financial dealings of  
14 the company, and that's because that was not in his  
15 responsibility there.

16 THE COURT: So what were the consulting projects that  
17 your client engaged in after he resigned as an officer?

18 MR. HENDERSON: He was more involved in marketing and  
19 the internet presentations and stuff and the way that the  
20 gambling was conducted over the internet. He worked on the  
21 computer end of that kind of stuff and those kind of projects.  
22 He had nothing to do with the financial affairs of the company.

23 THE COURT: Go ahead. I interrupted you.

24 MR. HENDERSON: Oh, no, no. That's pretty much it.

25 THE COURT: All right. What is the status of

H9s1toms

1 Mr. Tom's home, and I understand he has a business in Antigua,  
2 particularly after the recent hurricanes?

3 THE DEFENDANT: May I?

4 MR. HENDERSON: Sure. With the Court's permission,  
5 that's the same question I asked him last night.

6 THE COURT: Why don't we hold off. I'm going to ask  
7 you, Mr. Tom, if you want to say anything in your own behalf  
8 after I finish talking to your lawyer, so you can hold that  
9 thought.

10 MR. HENDERSON: He does want to address the Court at  
11 some point.

12 And the question as addressed to me, my understanding  
13 is that the business was ongoing, it survived the hurricane  
14 problem down there, and that things are up and running. So --

15 THE COURT: All right. Now Mr. Tom also owns a home  
16 in Costa Rica, although he has not been there in many years,  
17 correct?

18 MR. HENDERSON: That's correct.

19 THE COURT: So that is a financial resource  
20 potentially for the payment of the forfeiture amount, correct?

21 MR. HENDERSON: Correct. Although the problem we've  
22 had with that is, the property appears to be basically  
23 unmarketable. It's a fairly nice home, but the home I think  
24 right on the same block or right down the street from it is of  
25 equal market value and has been on the market more than three

H9s1toms

1 years without having even an offer on the property, so as best  
2 we can determine at this place, although it appears to have a  
3 market value, it's given a market value, he's been unable to  
4 sell that, and he just can't make it liquid at this point. So  
5 we're going to have to pay, in terms of the forfeiture,  
6 payments along the way.

7 THE COURT: Is the home vacant or is it rented?

8 MR. HENDERSON: It's rented.

9 THE COURT: Okay. So there's some income coming in.

10 MR. HENDERSON: Correct.

11 THE COURT: All right. Now you anticipated my next  
12 thought, which is that there is a not insignificant forfeiture  
13 amount as a condition of your client's plea agreement --  
14 \$300,000.

15 MR. HENDERSON: Correct.

16 THE COURT: How is that to be paid? And if he is not  
17 under active supervision in the United States, as would be the  
18 case for a US citizen defendant, what assurance does the  
19 government have that that amount will be paid?

20 MR. HENDERSON: I'm not sure the government has any  
21 more assurance than it does in any other case in which there is  
22 a forfeiture awarded by the Court. I'll tell you that this  
23 defendant is not a United States citizen. For a number of  
24 reasons he chose to give up his citizenship many years ago, and  
25 it's something that he regrets. He's been trying to arrange to

H9s1toms

1 get back in the United States pursuant to visas in the future.  
2 He still has family here. His mother died while he was out of  
3 the country before, and he couldn't get back because he wasn't  
4 a citizen and --

5 THE COURT: The reason he couldn't get back was  
6 because if he left Antigua, he would be subject to extradition,  
7 correct?

8 MR. HENDERSON: That's correct. This case was pending  
9 then. But the entry of a misdemeanor plea allows him to obtain  
10 visas to come back to the United States, whereas a felony plea,  
11 you know, would not. If he is not consistent with the Court's  
12 orders in this case, his visa can be denied by Homeland  
13 Security, which would disrupt the whole -- well, one of the  
14 primary reasons for his entry of the guilty plea to the  
15 misdemeanor as negotiated.

16 THE COURT: So you're saying he'd be motivated to make  
17 any payments he's required to make in the forfeiture --

18 MR. HENDERSON: I think he actually, because of that  
19 reason --

20 THE COURT: Wait. Don't interrupt me, counsel.

21 MR. HENDERSON: I'm sorry.

22 THE COURT: You're suggesting that he'll be motivated  
23 to pay what he owes on the forfeiture in order to enable him to  
24 continue to work towards regaining citizenship.

25 MR. HENDERSON: Yes. He's probably more motivated

H9s1toms

1 than most defendants if they had a way to just not pay it,  
2 which many defendants choose to do.

3 THE COURT: And Mr. Chan, what's the government's view  
4 about the forfeiture and how to make sure it happens?

5 MR. CHAN: Your Honor, I think the point that you  
6 raised is a good one, and that is that where a defendant is  
7 located outside of the United States, they are frequently  
8 outside of the reach of many of the collection tools that the  
9 Marshals Service would ordinarily use.

10 THE COURT: The property isn't here.

11 MR. CHAN: That's right. So I think that the Marshals  
12 Service will make all attempts to make collections. Obviously  
13 those collections will be made easier if the defendant is  
14 sending payments according to the payment plan that's set by  
15 the Marshals Service, but all of that being said --

16 THE COURT: Forgive me for interrupting, Mr. Chan.  
17 With a forfeiture sum of this amount, is it up to the Marshals  
18 Service to negotiate a payment plan with the defendant? Is  
19 that what happens?

20 MR. CHAN: Yes. My understanding, your Honor, is that  
21 based on the defendant's financial circumstances, the Marshals  
22 Service can set up a payment plan for the payment of  
23 forfeiture.

24 THE COURT: Is that correct, Mr. Henderson?

25 MR. HENDERSON: I would think that would be the

H9s1toms

1 probation office, based on my experience in the past. If I'm  
2 wrong, I'm wrong. But if he's reporting to probation, they're  
3 the ones that are going to be monitoring that situation.

4 THE COURT: And if he's not reporting? What if he  
5 doesn't have supervised release?

6 MR. HENDERSON: Maybe the Marshals Service is where we  
7 are.

8 THE COURT: Has any arrangement, any payment plan, any  
9 schedule been set yet?

10 MR. HENDERSON: No. We were going to discuss that  
11 with the Court and suggest \$25,000 payments every few months,  
12 which is something -- I told him that I did not want to address  
13 the Court with a proposal that he could not live up to, and  
14 that's what he tells me he can do.

15 THE COURT: Did Mr. Tom put up cash in connection with  
16 his bail package?

17 MR. HENDERSON: He did, and that's an issue I wanted  
18 to talk to you about after sentencing.

19 THE COURT: Why don't you talk to me about it now.

20 MR. HENDERSON: Okay. I'm going to talk to you about  
21 it right now.

22 He put up a hundred thousand dollars cash bond in this  
23 case.

24 THE COURT: Is that his money or someone else's?

25 MR. HENDERSON: Well, that's the issue that I wanted

H9s1toms

1 to talk to you about. Mr. Tom says that was his money that he  
2 inherited from his grandmother, which went to his -- originally  
3 just given to his father to hold for him because he was out of  
4 the country experiencing these legal difficulties. His father  
5 is now contending that that is his money. So it's money that  
6 we plan to put up towards the restitution obligation, or the  
7 forfeiture obligation, I guess more correctly, and so I was  
8 going to suggest to the Court that until we can sort of work  
9 out this problem -- which I've got another lawyer in my office  
10 working on and it appears to be -- although I don't want to  
11 prejudge it, it appears to be my client's money. I was going  
12 to suggest that the Court enter an order releasing the bond  
13 money to me for payment, placement in my trust account until  
14 this can be resolved, and I would not release the money to  
15 anyone else without first informing the Court and hopefully  
16 applying that \$100,000 towards the \$300,000 forfeiture  
17 obligation.

18 THE COURT: If I enter no order whatsoever, the money  
19 would go to who, Mr. Tom?

20 MR. HENDERSON: I'm not sure. He's the one that wrote  
21 the check I believe out of his account, because the money had  
22 originally gone to his account, although apparently it's money  
23 that belonged to my client, which was inheritance money from  
24 his grandmother. Correct?

25 THE DEFENDANT: Yes, that's correct.

H9s1toms

1 THE COURT: All right. Well --

2 MR. HENDERSON: So I didn't want to get into this  
3 family dispute over who the money owed, but I certainly didn't  
4 want to give a hundred thousand dollars of restitution money  
5 that we planned to give to the government --

6 THE COURT: Forfeiture.

7 MR. HENDERSON: Yes, forfeiture money -- that we  
8 planned to give to the government back to the father and have  
9 that money disappear until I could at least resolve it in a  
10 fair manner, which I assume will result in the money going to  
11 the government.

12 THE COURT: Mr. Chan, does the government have a view?

13 MR. CHAN: Your Honor, we have no information about  
14 the dispute between the defendant and his father as to the  
15 ownership of this --

16 THE COURT: Well, does the government agree that as  
17 the sentencing judge, I can direct who the hundred thousand  
18 dollars goes back to?

19 MR. CHAN: Yes, we do believe the Court has that  
20 authority.

21 THE COURT: Okay. And what does the government think  
22 of counsel's proposal that it go to his trust account pending  
23 further order of the Court?

24 MR. CHAN: We have no objection to that.

25 THE COURT: Okay.

H9s1toms

1 MR. HENDERSON: And I will say, your Honor, that  
2 Mr. Tom has brought an additional \$25,000, which is in my trust  
3 account now, which we plan to pay to the clerk's office  
4 following today's proceeding towards that obligation as well.

5 THE COURT: All right. And Mr. Chan, does the  
6 government agree that as part of my sentencing order, I have  
7 either the power or arguably the obligation to set a payment  
8 schedule for the forfeiture, or is that between your office  
9 and/or the Marshals office and this defendant?

10 MR. CHAN: Your Honor, my understanding is that the  
11 Marshals Service typically will get in contact with the  
12 defendant and set a schedule that will take into account the  
13 defendant's financial circumstances. That being said, if the  
14 Court were to set a payment schedule, I'm sure that the  
15 Marshals Service would defer to that.

16 MR. HENDERSON: I'm sure that's the answer.

17 THE COURT: I'm glad you're both sure.

18 All right. Anything else you want to tell me,  
19 Mr. Henderson?

20 MR. HENDERSON: Very briefly. I know your Honor has  
21 read our sentencing memorandum.

22 Mr. Tom is a 38-year-old young man with no prior  
23 criminal record. He worked his way -- because of some terrible  
24 dysfunctional family circumstances when he was a young man, and  
25 actually left home during high school, with his stepbrother.

H9s1toms

1 He and his stepbrother worked their way through high school and  
2 through college on their own.

3 THE COURT: His stepbrother was previously sentenced  
4 in connection with the same scheme, correct?

5 MR. HENDERSON: He was. He worked at the business,  
6 but, differing from Mr. Tom, he did not leave the business in  
7 2007 upon the passing of UIGEA, which caused everyone else who  
8 stayed for another four years to be indicted. He went to work  
9 at the invitation of his stepbrother down in Costa Rica with  
10 this business and, in fact, as I pointed out in the sentencing  
11 memorandum, originally consulted with legal counsel and was  
12 told that what they were doing was not in violation of the law;  
13 it was a licensed legal business down in Costa Rica.

14 In 2007, when UIGEA was passed, he came to have doubts  
15 about whether or not it was appropriate to be working there  
16 because of the US aspect of the business, and he resigned. He  
17 was only one of the 11 original defendants in the case that in  
18 fact left the company upon the passing of the UIGEA statute.  
19 Everyone else wound up being indicted under UIGEA, but this  
20 defendant in fact, as it turned out -- and I think originally  
21 unknown to the government, but be that as it may, as it turned  
22 out, was gone at the point of the beginning of the enforcement  
23 of that statute.

24 I've cited a number of cases, or at least called the  
25 Court's attention to a number of cases from all around the

H9s1toms

1 country, many from this district, in which people far more  
2 involved in gambling activities than Mr. Tom received  
3 noncustodial sentences. Those certainly aren't binding. I  
4 included them just for illustrative purposes, because I thought  
5 it made the point that I thought was particularly applicable  
6 vis-à-vis Mr. Tom.

7 This misdemeanor took place that he's entered his plea  
8 to now over ten years ago, and he's been legitimately employed  
9 ever since without any criminal legal problems whatsoever. The  
10 low offense level of 4 obviously is squarely within the  
11 noncustodial sentence range. Mr. Tom, as the Court knows,  
12 voluntarily surrendered from a jurisdiction from which he could  
13 not be extradited, which I think is to his credit. He wanted  
14 to put this behind him. The government is not asking for jail  
15 time. They never have been in this case. The presentence  
16 report, as I've already noted, recommends no jail time.

17 Homeland Security has informed us that they would like to have  
18 him leave the country no later than next Monday, which is three  
19 or four days from now. He has in fact his plane ticket and  
20 itinerary to leave on Saturday. The Homeland Security agent is  
21 in the audience today that we've been dealing with and has been  
22 very helpful in that regard. As I indicated --

23 THE COURT: And in order to return to the country, he  
24 would then need to apply for a visa, correct?

25 MR. HENDERSON: Correct. He would.

H9s1toms

1 THE COURT: And he's leaving for where, Antigua?

2 MR. HENDERSON: He's going to return to Antigua, yes.  
3 As I indicated previously, he has brought with him \$25,000  
4 today, which will be deposited at the clerk's office towards  
5 his restitution obligation. I think the 11 or 12 character  
6 letters which we attached to our sentencing memorandum are a  
7 pretty good indication of what actually a very terrific young  
8 man this is, with a bright future, very accomplished, with no  
9 reason to think that he would ever be a recidivist. He doesn't  
10 have to be. He'll be a success in whatever he does.

11 So I hope the Court agrees with me that a noncustodial  
12 sentence is appropriate here.

13 With regard to the return to Antigua, assuming the  
14 Court allows that, we would also need a court order indicating  
15 to pretrial services that they return his passport to him today  
16 so that he'll be able to travel out of the country and on  
17 Saturday as scheduled.

18 And that being said, Mr. Tom has indicated to me he'd  
19 like to address the Court very briefly at some point, and I  
20 thank your Honor for listening to me.

21 THE COURT: Thank you, counsel.

22 Before I give Mr. Tom an opportunity to address the  
23 Court, are there any victims of the crime present in the  
24 courtroom who wish to be heard?

25 Hearing none, Mr. Tom, what would you like to tell me?

H9s1toms

1           You may stay at the table if you wish, or you may use  
2 the podium. It's up to you.

3           THE DEFENDANT: Your Honor, I very much regret the  
4 choices I've made, and after years of isolation and time to  
5 think, I realize I needed to come and face the Court in the US  
6 to try and move forward with my life. I hope you can consider  
7 my apology, and I look forward to returning home to a  
8 productive life.

9           Thank you very much.

10          THE COURT: Thank you, Mr. Tom.

11          In preparing to sentence Mr. Tom, I have considered  
12 the presentence investigation report, the recommendations of  
13 the probation office, and everything said to me today by  
14 counsel and by Mr. Tom, as well as Mr. Tom's written  
15 presentence material. I have also considered the factors  
16 listed in 18 United States Code Section 3553(a), which states  
17 that the Court shall impose a sentence sufficient but not  
18 greater than necessary to reflect the seriousness of the  
19 offense, to promote respect for the law, to provide just  
20 punishment for the offense, to afford adequate deterrence to  
21 criminal conduct, to protect the public from further crimes by  
22 the defendant, and, where applicable, to provide the defendant  
23 with any needed educational or vocational training, medical  
24 care, or other correctional treatment in the most effective  
25 manner. I am also required to consider the nature and

H9s1toms

1 circumstances of the offense and the history and  
2 characteristics of the defendant, the kinds of sentences  
3 available, the applicable Sentencing Guidelines provision, any  
4 relevant Sentencing Commission policy statements, the need to  
5 avoid unwarranted sentence disparities among defendants with  
6 similar records who have been found guilty of similar conduct,  
7 and, in appropriate cases, any need to provide restitution to  
8 victims.

9           Mr. Tom, the crime that you are being sentenced for  
10 today does indeed appear to be the only significant blemish on  
11 an otherwise law-abiding life and a promising business career.  
12 You have survived a difficult childhood. You served as  
13 protector and role model to your siblings, particularly your  
14 younger sister. You have your sister's affection and  
15 admiration as well as the admiration and respect of your  
16 friends and a large segment of the business community in your  
17 adopted home in Antigua, as demonstrated by the many letters of  
18 support I have received. You have made a productive life for  
19 yourself there, and no doubt that country can use your skills  
20 and your energy in the coming months and years during its own  
21 rebuilding process.

22           To your credit, you resigned from Absolute Poker in  
23 2007 largely to avoid violating US law, and ten years later you  
24 returned voluntarily to the United States, albeit somewhat late  
25 in the day in terms of the pending criminal proceeding, to deal

H9s1toms

1 with the case against you.

2 All of that said, you did commit a crime. That's why  
3 you're here. You pleaded guilty to a crime. And in your case  
4 that crime consisted of continuing to perform work for Absolute  
5 Poker after you resigned and knew that it was engaged in  
6 unlawful conduct. It is a misdemeanor, to be sure, which has  
7 immigration and other consequences, but a misdemeanor is a  
8 crime. I cannot ignore that.

9 I am reluctant to sentence you to time served followed  
10 by a period of supervised release, as recommended by probation  
11 because, as a practical matter, you have not served any time,  
12 number one, and because your supervised release, as a practical  
13 matter, will turn into unsupervised release once you leave the  
14 country. In addition, I don't think you need supervised  
15 release. You have already demonstrated that you are capable of  
16 living a law-abiding life for a sustained period of time.  
17 Accordingly, it is my intent -- and I will give counsel an  
18 opportunity to comment further before I impose sentence, but it  
19 is my intent to sentence you to one week of imprisonment, seven  
20 days in prison. I can either remand you today or I can set a  
21 date for your voluntary surrender. I hope you did not purchase  
22 a nonrefundable plane ticket.

23 No supervised release.

24 A fine of \$2,500 as recommended by probation.

25 A special assessment in the amount of \$25, which is

H9s1toms

1 mandatory and is due immediately.

2           And in addition, as we previously discussed, you are  
3 required to forfeit the sum of \$300,000 in United States  
4 currency, which was part and parcel of your plea agreement.  
5 Your counsel has proposed and I agree that 25,000 of that is to  
6 be paid immediately, and my view is that your payment schedule  
7 thereafter should not be set by me today, without a detailed  
8 handle on your financial capability, but should be left to the  
9 government, Mr. Chan says through the Marshals Service, to set  
10 a payment schedule for that.

11           So does defense counsel have any objection to the  
12 sentence that I intend to impose or know of any legal reason  
13 why it should not be imposed as stated?

14           MR. HENDERSON: May I have just a brief moment to  
15 confer with my client.

16           THE COURT: You may.

17           (Mr. Henderson conferring with the defendant)

18           THE COURT: Counsel.

19           MR. HENDERSON: Thank you, your Honor.

20           Really the only thoughts I have are, in view of the  
21 totality of your comments about the circumstances concerning  
22 this defendant, one has to wonder a bit, you know, what the one  
23 week in custody with regard to this defendant really  
24 accomplishes. It is a nonrefundable ticket, by the way.

25           THE COURT: That was a bold move, on the eve of

H9s1toms

1 sentencing.

2 MR. HENDERSON: I understand that. But, you know, we  
3 figured if Homeland Security is going to throw him out, we're  
4 sort of caught between a rock and a hard place. So we bought  
5 the cheapest ticket that he could. So I hope your Honor would  
6 sort of reconsider that.

7 I think they would probably hold him in the lockup  
8 here. They're not going to send him anywhere, obviously, for  
9 one week. They couldn't even really do that. So if your Honor  
10 is going to stick to your initial thoughts, I guess he would  
11 like to start, you know, serving that week next Monday, if he  
12 could.

13 THE COURT: And does the government have any objection  
14 to the sentence or know of any legal reason why it should not  
15 be imposed?

16 MR. CHAN: No, your Honor.

17 THE COURT: All right. Mr. Tom, please rise.

18 Mr. Tom, it is the judgment of this Court that you be  
19 sentenced to one week of imprisonment, seven days in custody.  
20 You may voluntarily surrender no later than next Monday, which  
21 is October the 2<sup>nd</sup>, 2017.

22 You will pay a fine of \$2,500.

23 You will pay a \$25 special assessment.

24 You will forfeit United States currency in the amount  
25 of \$300,000, beginning with an immediate payment of \$25,000.

H9s1toms

1           Your custodial sentence will not be followed by any  
2 supervised release.

3           You may be seated.

4           I am also obligated to tell you, Mr. Tom, that you  
5 have a right to appeal from your sentence except to the extent  
6 that you have validly waived that right as part of your plea  
7 agreement. If you appeal and if you are unable to pay the cost  
8 of an appeal, you may apply for leave to appeal *in forma*  
9 *pauperis*. Any appeal must be filed within 14 days of the  
10 filing of the judgment of conviction.

11           I direct that a complete copy of the presentence  
12 investigation report as revised be provided to the Sentencing  
13 Commission and that counsel on any appeal have access to the  
14 report. It will otherwise be maintained under seal. The clerk  
15 will prepare the judgment and will see to it that the required  
16 documentation is sent to the Sentencing Commission.

17           At the suggestion of Mr. Henderson and with no  
18 objection from the government, I will direct that the \$100,000  
19 cash security that was a part of Mr. Tom's bail package be  
20 released to Mr. Tom's counsel to be placed in his attorney  
21 trust account pending further order of the Court as to its  
22 disposition.

23           Is there anything further from the government?

24           MR. CHAN: No, your Honor.

25           THE COURT: Anything further from the defendant?

H9s1toms

1 MR. HENDERSON: I think not, but if I could have the  
2 Court's indulgence for one minute, I would like to consult with  
3 the Homeland Security agent that's in the courtroom, only to  
4 make sure that this one-week term of imprisonment isn't going  
5 to cause problems and would actually have him in for  
6 considerably more than a week because of any --

7 THE COURT: Because of a detainer.

8 MR. HENDERSON: -- because of some kind of Homeland  
9 Security detainer.

10 I'm informed there are no issues, so okay.

11 THE COURT: Very well then. We're adjourned. Thank  
12 you, gentlemen.

13 MR. HENDERSON: Oh, your Honor, one further thing.  
14 I'm sorry. Where does he report? Do you want him to report to  
15 the Marshals office in this building on Monday?

16 THE COURT: Mr. Chan?

17 MR. CHAN: Yes, that should work.

18 MR. HENDERSON: Twelve noon? Twelve noon okay?

19 MR. CHAN: That should also work.

20 THE COURT: Twelve noon, Marshals office, here, on  
21 Monday.

22 MR. HENDERSON: Thank you, your Honor.

23 THE COURT: Okay. Thank you.

24 o0o