

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:06-CR-136-D3

UNITED STATES OF AMERICA)
)
 v.)
)
 KEVIN L. GEDDINGS,)
)
 Defendant.)

ORDER

The sentencing hearing will take place in courtroom 1 of the Terry Sanford Federal Building, 310 New Bern Avenue, Raleigh, North Carolina at 9:00 a.m. on Monday, May 7, 2007.

Defendant Kevin L. Geddings is a former North Carolina Lottery Commissioner. He was convicted of five counts of honest services mail fraud. Pursuant to Federal Rule of Criminal Procedure 32(h), the court provides notice that it is considering a two-level increase in the offense level under U.S.S.G. § 3C1.1. The court is considering this enhancement not only for the reasons set forth in the Presentence Investigation Report, but for the following independent, alternative reasons. It appears to the court that the defendant “willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the . . . prosecution . . . of the instant offense of conviction, and . . . the obstructive conduct related to . . . the defendant’s offense of conviction and any relevant conduct . . .” U.S.S.G. § 3C1.1.

It appears that Kevin Geddings committed perjury during his trial testimony in at least the following ways: (1) testifying that he believed, based on his October 10, 2005, conversation with Perry Newson (the Executive Director of the North Carolina Board of Ethics), that Perry Newson’s “newspaper rule” meant that his amended Ethics Statement should simply track the information in

the media; (2) denying that he told Ira Raphaelson and Larry Potts on October 27, 2005, that if he (Geddings) had disclosed his work with Scientific Games, then he would not have gotten the Lottery Commission position; (3) denying an intent to defraud the people of North Carolina in connection with Gov. Exs. 1-5; and (4) testifying that he did not exercise favoritism towards any party (including Scientific Games) while a Commissioner. If the court finds that Geddings obstructed justice while testifying, then the two-level increase applies. See U.S.S.G. § 3C1.1, cmt. n.4(b); see also United States v. Dunnigan, 507 U.S. 87, 94 (1993); United States v. Godwin, 272 F.3d 659, 671 (4th Cir. 2001).


“For a sentencing court to apply the obstruction of justice enhancement based on perjury, the sentencing court, by a preponderance of the evidence, must find three elements: (1) the defendant gave false testimony, (2) concerning a material matter, (3) with the willful intent to deceive (rather than as a result of confusion, mistake, or faulty memory).” United States v. Sun, 278 F.3d 302, 314 (4th Cir. 2002); see also United States v. Quinn, 359 F.3d 666, 681 (4th Cir. 2004); United States v. Jones, 308 F.3d 425, 428 (4th Cir. 2002); United States v. Stotts, 113 F.3d 493, 498 (4th Cir. 1997); United States v. Cook, 76 F.3d 596, 605-06 (4th Cir. 1996). The parties should be prepared to address the proposed enhancement under U.S.S.G. § 3C1.1 at the sentencing hearing.

Pursuant to Rule 32(h) of the Federal Rules of Criminal Procedure, the court also provides notice that it is contemplating an upward departure from the advisory Guideline range established at the sentencing hearing. See, e.g., United States v. Davenport, 445 F.3d 366, 371 (4th Cir. 2006); United States v. Moreland, 437 F.3d 424, 432-37 (4th Cir. 2006). The grounds for this possible upward departure include application note 7 of U.S.S.G. § 2C1.1, circumstances not adequately taken into account under U.S.S.G. § 5K2.0, and disruption of governmental function under U.S.S.G. § 5K2.7.

The court also provides notice under Rule 32(h) that it is contemplating a variance above the advisory Guideline range established at the sentencing hearing. A variance sentence would be designed to ensure that the court imposes a sentence “sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” 18 U.S.C. § 3553(a). These purposes include a sentence that reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, and affords adequate deterrence to criminal conduct. See 18 U.S.C. § 3553(a)(2)(A)-(B). Of course, the court intends to consider, as appropriate, all of the factors set forth in 18 U.S.C. § 3553(a).

Any legal memoranda, motion, or other material that either party wants the court to consider at the sentencing hearing must be filed or submitted not later than noon on April 30, 2007. If a party wishes to respond in writing to any memoranda, motion, or other material, such a response is due not later than noon on May 2, 2007.

SO ORDERED. This 19 day of April 2007.


JAMES C. DEVER III
United States District Judge