

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE
WESTERN DISTRICT OF MISSOURI.

UNITED STATES OF AMERICA, Plaintiff,

vs

JOHN LAZIA, Defendant.

No. 12038 No. 12287 (Consolidated)

ANNA M. FELTENSTEIN

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OF THE WESTERN DISTRICT OF MISSOURI.

UNITED STATES OF AMERICA, Plaintiff,

—vs—

JOHN LAZIA, Defendant.

No. 12028

No. 12287

(Consolidated).

STATEMENT MADE BY THE COURT WHEN IMPOSING SENTENCES.

THE COURT: The defendant was convicted by a jury in these consolidated cases of the charge in the Information (in case No. 12028) that he wilfully failed to make an income tax return for the year 1929 and of the charge in the second count of the indictment (in case No. 12287) that he wilfully failed to make an income tax return for the year 1930. The first and third counts of the indictment, of which he was acquitted, charge the defendant with having wilfully attempted to evade the payment of an income tax for

the years 1929 and 1930. It is my duty now to impose sentences upon the defendant as to the charges of which he was convicted.

The very able attorney who represented the defendant during the trial of the case and who has spoken for him now in connection with the imposition of sentence has referred to the great public interest which has been manifested in this case. Of course, I am aware of that fact. I could not be unaware of it. It was manifested by the number of spectator constantly present at the trial and in the great publicity given to the case from its inception, both in the local press and in the whole press of Missouri. Counsel for the defendant has here suggested that by reason of that great public interest the jury and the judge might unconsciously have been prejudiced against the defendant.

I cannot speak for the jury except to say that so far as it was humanly possible to obtain a jury of unprejudiced men that was done. The voir dire examination was intended to develop whether there was any bias or prejudice in the mind of any member of the panel. Certainly every member of the jury which tried the case swore upon his oath that he had no prejudice or bias one way or the other. I went to unusual lengths to see to it that there would not be a prejudicial jury. I directed the Clerk of the Court to furnish counsel on both sides the jury list immediately it was made up, so that counsel could make any investigation they wished to make concerning the members of the panel. And when an additional panel was drawn, because so many had been excused it was clear there would not be a sufficient number remaining, I personally called the attention of counsel on both sides to that fact so they immediately could obtain the additional jury list. I cannot believe that the jury was prejudiced against the defendant in any way. The outcome of the case, the fact that the defendant was found not guilty of the two felony charges, in the indictment would seem to indicate that if the jury had any prejudice it was in favor of the defendant, not against him.

I do not know whether it is becoming to speak of the Court's mental attitude toward the defendant and I would not speak of it had it not been suggested here that unconsciously the Court might have been prejudiced.

I know I was not prejudiced against this defendant. I never had seen him before he was arraigned. I have been trying in this court criminal cases, among others, for nine years and if ever I have had a prejudice against any defendant I certainly have no

recollection of it. My natural tendency is to acquire a friendly feeling and sympathy for the man on trial.

Every doubtful question which arose during the progress of this case, if I thought it was a doubtful question, I resolved in favor of the defendant. And I am very sure that now, in imposing sentences on the defendant, there will not be anything said by me nor in the sentences that will justify a thought that even unconsciously I have any prejudice against him.

The offenses of which the defendant was convicted are defined in the statute and it is provided that for each such offense the maximum possible punishment shall be imprisonment in a county jail for a period of twelve months and a fine of \$10,000. The minimum possible punishment, of course, is a nominal fine. It was the view of Congress when the statute was enacted that there might be a case in which the mere wilful failure to file an income tax return, even although no income tax actually was due, should, under its special circumstances, receive the maximum punishment.

The maximum punishment which might be imposed in this case, in view of the fact that the defendant was convicted of two offenses, is two years' imprisonment in a county jail and a total fine of \$20,000.

What punishment should be imposed in any case, whether the maximum or the minimum or some punishment intermediate the extremes, depends on the circumstances of the case, whether they are aggravated or mitigating, upon the previous record of the defendant, whether it is a good record or a bad record from the standpoint of citizenship and obedience to the law, upon the general reputation of the convicted person, whether it is good or bad. I think also that what sentences have been imposed in the same court upon others, who have been convicted of the same offense if the circumstances of their cases substantially were the same, should be given consideration. I may say parenthetically that I recall only one case I have tried here in which the offense charged was this offense. In that case the defendant was accused in one count of having wilfully failed to make an income tax return and in another count with having wilfully attempted to evade the payment of an income tax. It was tried to a jury. The jury found the defendant not guilty of a felony and guilty of the misdemeanor. The circumstances in a general way were very much like those here excepting that in that case the defendant

was convicted only of one offense. The sentence I imposed in that case was imprisonment in a county jail for seven months and a fine of a substantial amount.

All of these factors which should be taken into consideration I have taken into consideration in arriving at a conclusion as to what sentences should be imposed and I have taken into consideration what has been said by counsel on behalf of the accused. I shall not discuss any one of these factors. One thing I do not do ever is to lecture, castigate or add anything to the mental distress of a convicted man. I have taken all of these factors into consideration.

I have never except once imposed a maximum punishment in any case which has been tried in this court, no matter what the circumstances of the case. I do not intend to impose the maximum sentences in this case.

It is the sentence and judgment of the court as to the charge embodied in the Information, case No. 12028, of which the defendant was convicted, that he be imprisoned in the Christian County Jail at Ozark, Missouri, for a period of twelve months and that he pay a fine of \$2500.

It is the intention of the court that, if the motion for a new trial presently to be argued is overruled, and if the judgment of this court is affirmed by the Court of Appeals, should the case be appealed as no doubt it will be, it is the intention of the court that this sentence to the Christian County jail shall be served by the defendant.

It is not the intention of the court that the sentence now about to be imposed as to the second count of the indictment, of which the defendant was convicted, so far as it embodies a sentence of imprisonment, shall actually be served by the defendant, unless, by his future conduct, he elects to serve it.

As to the second count of the indictment of which the defendant was convicted, it is the sentence and judgment of the court that the defendant be imprisoned in the Gentry County jail at Albany, Missouri, for a period of twelve months and that he pay a fine of \$2500. This sentence of imprisonment in the Gentry County jail on the second count of the indictment is suspended and the defendant is placed on probation for a period of five years as to that sentence, upon these conditions in addition to such other usual conditions as accompany probation in this court: - (1) that on the first day of every month, if that be a business day, otherwise upon the next succeeding business day, the

defendant will appear in person before one of the probation officers of this court, except during the period he is confined in the Christian County jail, and make such report and in such form as the probation officer properly may require and answer all such questions as the probation officer properly may ask of him;—(2)—during the period of probation the defendant will engage only in honorable, upright and legitimate pursuits and activities; (3) During the period of probation the defendant strictly will obey all state and municipal laws which may apply to him; (4) Before the expiration of the second year of the period of probation the defendant will pay the fine of §2500 assessed in connection with the second count of the indictment, unless it has otherwise been collected by the government.

Such are the sentences. It will be observed, I think, that if the conditions of the probation granted are not violated, together they are less than one-half of the maximum which might be imposed for these offenses.

An exception is allowed to the defendant.

ORDER

The foregoing statement is hereby ordered to be made and the same is made a part of the record in this case.

Merrill E. Otis

District Judge.