

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION

UNITED STATES OF AMERICA :  
VS. : Criminal Action No. 2413  
JOE E. SIMMONS :

BEFORE: HON. WILBUR D. OWENS, JR.  
United States Judge

Macon, Georgia  
June 7, 1973

SENTENCING PROCEEDINGS

THE COURT: All right, Gentlemen, the Court will be pleased to hear from the defendant and his counsel.

MR. LAMBERT: May it please the Court, we want to say on behalf of our client, Mr. Simmons, that we feel like this is a very unusual case. We think there are some circumstances that we hope the Court will take into consideration. First of all we have a man here who is 45 or 6 years of age, with a wife and five children. He's got two children in college. How anybody can afford that at one time I don't know, but he does, and two in grade school. But the circumstances of this case, I think, are something that possibly could happen to most any - not anybody, but a lot of business men in the business world today.

THE COURT: Now, Mr. Lambert, I respect your duty to come in to court and represent Mr. Simmons but let's don't go into that, if you don't mind. Now that -

MR. LAMBERT: Well, Your Honor, I was about to lead up to this, that really and truly the circumstances of the loan itself, I knew that that has nothing to do with it, the fact that the Federal Land Bank is not complaining but-

THE COURT: We have heard the evidence, both of us have.

MR. LAMBERT: Yes sir, but we feel that there were some circumstances in the trial that came out that showed that Mr. Simmons had helped a lot of people, probably some people were dissatisfied with some of his actions, but we further feel

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that really there is no one badly hurt here and we are at the mercy of the Court and ask the Court to give careful consideration. This man has a lot of business interests that a severe sentence would certainly affect him tremendously in the business world and in his dealings in the future. We feel further that this crime is - - the jury has spoken. I feel that he has paid somewhat a debt to society in the embarrassment that it has caused him. I know there was one newspaper article published about it. I know that he has certainly worried about it because he has talked to me time and time again about it and to Mr. Hudson and the other lawyers who have had to help him. He's been through one trial in Atlanta and I really think he has paid a debt. I feel like he's learned his lesson, Judge. I really and truly believe that if he is given an opportunity to get back on his feet and to face the world and his friends and his family that he won't be back in this court again, and he certainly won't on this kind of charge, I'm sure. And I ask the court to be as lenient as you possibly can. I feel like even a probationary sentence would be detrimental to his business and we are here strictly at the mercy of the Court today, and ask you to give careful, careful consideration to a lenient sentence.

THE COURT: All right sir.

MR. MARKWALTER: We don't have anything else, Your Honor, unless Mr. Hudson would like to add something.

MR. HUDSON: I would just like to say one short thing here, Your Honor. I think a sentence ought to be commensurate

with the gravity of the crime. I don't think Joe Simmons, what I know of him, ought to be sent to the penitentiary because he has incurred the displeasure of the United States some way or other. I could understand the Government's case here a little bit better if he had hurt somebody, but he hasn't hurt anybody and I have felt real bad about this case. Frankly, it scares me to think that a business man can be convicted and sent off to the penitentiary just because he's evidently incurred somebody's displeasure.

THE COURT: Mr. Hudson, that is not what this case is about. Don't you gentlemen tell me that, now.

MR. HUDSON: I understand. I - I -

THE COURT: I'm not going to sit here and listen to that. You can get on the other team. That's not what this case is about.

MR. HUDSON: Yes sir. I understand that but my basic point is that I feel like the gravity of the crime should be taken into consideration.

THE COURT: This case is about a statute that the United States Congress passed that says that when you go to a financial institution to borrow money and you furnish them with written statements, you will tell the truth and not a falsehood. Now when the day comes in these United States that financial institutions can't rely upon the truth of what people say and put down in black and white, we had better close up and all cease doing business. That's just simple, old honor. That's what this case is about. And people don't get

get into matters like this accidentally. And now the evidence in this case, if it wasn't plain and indisputable there will never be a case about false financial statements in any court in the United States in this Judge's best judgment.

MR. LAMBERT: We certainly can't quarrel with that, Your Honor.

THE COURT: So let's don't quarrel with the verdict.

MR. HUDSON: Well, I just wanted to make the point that it - that he hasn't damaged anybody.

THE COURT: Well, the facts surrounding the transactions are a little hazy. The Court has had an extensive background done into it and it is even different than what it appeared at the trial, but I am not going to debate that. We are not here to retry the case, but I want to tell you all that maybe you don't know all about it.

MR. LAMBERT: I am sure there are many circumstances we don't know.

THE COURT: Sure don't. Mr. Simmons does, but Mr. Simmons hasn't told all of it even in the courtroom.

MR. LAMBERT: Well, Your Honor, he was on trial -

THE COURT: And that's not idly said, either. I'm not just speaking off the top of my head either, Gentlemen. Now, if he wants to tell about it now is the chance. He can do it.

MR. LAMBERT: Well, we certainly want Mr. Simmons to make a statement to the Court, if you would permit it, sir.

THE COURT: All right sir.

MR. SIMMONS: I'm just scared to death, to tell you the truth. I certainly never had a feeling like this, never been in this position. I can, before my God, say that I never intended to hurt anybody, Judge. I - I might not have been as careful and as meticulous in the paper work, way it was, as I should have been, but I certainly didn't have - didn't ever intend to hurt a living soul or an institution, the United States Government or anybody else, and I just beg you to do what you can.

I have certainly learned many lessons these last few months, and what - I don't know. I just have to beg you to do the best you can.

THE COURT: Well, let me explain to you first of all, Mr. Simmons, that under the Federal Rules you have a right to appeal from whatever sentence is imposed by virtue of the fact that you entered a plea of not guilty and then were convicted by a jury. You have ten days within which to file a notice of appeal. Your lawyers may file it and will do so, or the Clerk of the Court will file it for you if you wish that to be done, but I am required to advise you of that by the Federal Rules.

Now, of course, this case involves a false financial statement. Of course, you didn't choose to file any small one. Some million two hundred thousand dollars was the total amount of the statement. And then your income tax return, which turned out to be not an income tax return. So we are not here

talking about any little trivial matter. Of course, nobody has lost any money so far but the law is not concerned with just false statements that result in people losing money. As I pointed out to your lawyers, we are talking about here about honor and integrity in the world that we all live in and that's what this case is about.

Now, I'm going to talk about other things, but all I am sentencing you on is the case that you have been tried for. Of course, as Mr. Simmons knows he and I have personally known each other longer than I have known any of you gentlemen. He grew up in Albany and Dougherty County, and so did I, so personally I know of his background, but we don't really on that because the probation officer has been out and he has talked with everybody he can find about Mr. Simmons, and basically the Court's best judgment, Mr Simmons, is that while some people may not have lost any money a lot of folks have as a result of your activities. The profile from everybody who has dealt with you for many years, going way back, just indicates you are one of those people that seems would sell snow to the Eskimos if you could.

I wrote down on the top of my pad in quotes here "con artist." You really believe that you can stand up and tell anybody anything and they will swallow it, and a lot of people do. We heard all these people up there in the courtroom. They weren't there because they lost money but because they fell for one of those schemes you listed on that financial

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statement. It's obvious, the evidence shows that all of them did, even including the Bishop of the African Methodist Church who came there and told how you got him to come down and visit and stay at the Regency Hyatt House and use his name in that so-called deal to sell something - mementos of a painting! Well, it's just time you learned that you can't do that.

The indication is that you always very conveniently act in the background. You never become an officer or a director or a real employee of any of these schemes you conjure up. You are always the man that helps everybody, the man who is in the background, which is just a good way of avoiding being caught.

Now, that's your profile that the Court sees, and you just slipped up when you went to the Land Bank and put down in black and white, for one of your very few occasions, enough that somebody finally caught you, and if you keep on doing it you are going to get caught again and again and again. And that's the Court's best judgment of you from our investigation and from personally having known you for a long time. You are now and have been for many years a first class con artist and you simply tried to con this Land Bank Association, by giving them a big million dollar financial statement, into making you a loan, and by, of all things, producing an income tax return showing some three hundred thousand dollars of taxable income you never even filed a tax return on. That's what we are here about. That's the reason Congress



passed that statute. And that, Gentlemen, is about as serious a crime as you can have in the business world. If it is not I want you all to tell me what is, in the business world. It's just legalized robbery of a Land Bank, to just go in and convince them through false circumstances to let you have money that belongs to the members of the Association. It wasn't the Government's money. It belonged to these folks down there in your county.

MR. LAMBERT: Yes sir.

THE COURT: That's who it belonged to. But anyway, in the Court's best judgment it is a most serious crime committed by a man who had the tendency to do it, and the Court of Appeals may differ with what the jury did, but this Court can not.

MR. LAMBERT: Judge, let me say this about the Court of Appeals. We don't want to file an appeal in this case, I assure you of that. I think that that would probably do nothing but just drag it out and probably affect his mother, and further on down the road. I would like for him to get behind it, get it behind him, rather, and to look out on a bright new day, Judge, and try to really be remorseful about this thing and to start off a new and I would like for the Court to give him that chance if there is any way.

THE COURT: Mr. Simmons needs to start anew, but he's not headed in that direction. I had a stack of letters from doctors who tell me that Mr. Simmons, even if put on

probation, is going to destroy their big investments that he is lookig after. Well, we are not here about that, not a bit.

MR. LAMBERT: Yes sir. But I would like to see him have a chance to correct his ways if he could.

THE COURT: Well, in the Court's best judgment confinement is warranted in this case. I am going to sentence Mr. Simmons on both counts, to run concurrently, to pay a \$ 25,000 fine and serve three years in the dustody of the Attorney General. That is the sentence of the Court.

MR. HUDSON: Would you allow us to make an appeal bond?

THE COURT: Have you made arrangements with the court reporter? Our custom is that those be made. Are you prepared to make them this afternoon before an appeal bond will even be set?

MR. HUDSON: Yes sir, we will make them.

MR. CARSON: Your Honor, it's my impression that \$5,000 is the maximum penalty for each one of these counts.

THE COURT: All right, be a total of \$ 10,000. Excuse me. Five on each count. The appeal bond will be \$50,000 and be a special condition that Mr. Simmons will be convined geographically to the State of Georgia as a condition of that bond.

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