

NATIONAL LEGAL PROFESSIONAL ASSOCIATES

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MEMORANDUM

TO: ALL INTERESTED DEFENSE COUNSEL

FR: NATIONAL LEGAL PROFESSIONAL ASSOCIATES (NLPA)

RE: TECHNIQUES FOR AVOIDING LEADER/ORGANIZER SENTENCING ENHANCEMENT - ANOTHER NLPA VICTORY!!

NAME: ROWDY

We are often contacted by attorneys and defendants seeking advise and assistance as to how to avoid enhancement of a defendant's sentence under USSG §3B1.1(a) as the result of the defendant having allegedly been a leader or organizer of the criminal activity for which he has been convicted. It should come as no surprise to you that the government often puts into the Pre-Sentence Investigation Report information designed to enhance a defendant's sentencing guidelines when the government actually does not have the necessary proof that the requested enhancement is appropriate. Oftentimes because of the fact that counsel is unaware of how to controvert this type of requested enhancement the defendant winds up receiving a much longer sentence than otherwise should have been the case.

The recent case of US vs. Rowdy (No. 96 CR 195-1 USDC for the Middle District of North Carolina) is the latest NLPA victory involving this type of enhancement. In this case Mr. Rowdy was convicted of conspiracy to distribute cocaine base and when his Pre-Sentence Investigation Report was completed by the United States Probation Office they recommended that because Mr. Rowdy was allegedly an organizer or leader of the criminal activity that his offense level should be increased by **four levels**.

Working in conjunction with Mr. Rowdy's counsel, John Brison, National Legal Professional Associates then prepared a motion pursuant to the provisions of Rule 32 of the Federal Rules of Criminal Procedure to controvert this improper enhancement. Upon receipt of the Motion, the Court then held an evidentiary hearing during which it instructed the government to provide evidence that their allegation concerning Mr. Rowdy being a leader or organizer of the conspiracy was accurate. The government then attempted to do so by putting on the stand numerous co-defendants and other individuals who were cooperating with the government, however, after hearing the testimony of these individuals the Court concluded that NLPA's position was correct and that Mr. Rowdy was not, in fact, a leader or organizer of the conspiracy and ordered the four point enhancement **deleted** from the Pre-Sentence Report. As the result of this decision, **Mr. Rowdy's sentencing guidelines were reduced from 262 months to 168 months which resulted in saving Mr. Rowdy approximately 8 years incarceration.** A copy of Mr. Brison's

letter confirming this development is attached hereto.

How can NLPA help?

If you are representing a defendant who is about to be sentenced, or who has already been sentenced with the result that the sentence imposed was much longer than it should have been due to the Court's reliance upon inaccurate information contained in the Pre-Sentence Report, NLPA can help. If you are representing a defendant who is waiting to be sentenced but whose Pre-Sentence Investigation Report contains erroneous, inaccurate information concerning issues which, if not corrected, will adversely impact upon the defendant's sentencing guideline range, NLPA will be happy to assist you as counsel in the preparation of a motion pursuant to the provisions of Rule 32 of the Federal Rules of Criminal Procedure together with a Memorandum of Law and Support which outlines all of the appropriate sentencing guidelines and case law which is designed to put the court on notice of the erroneous information contained in the Pre-Sentence Investigation Report. As you know, once such a motion is filed the burden of proof shifts back to the government to have to prove that the information that they have put into the Pre-Sentence Report is accurate. If you are representing a defendant who has already been sentenced and has received a much greater sentence than he should have based upon the erroneous information contained in the Pre-Sentence Report, NLPA can also help with regard to the preparation of an appeal or a post-conviction motion raising this as one of the issues to collaterally attack the sentence that has been imposed erroneously upon your client. NLPA can assist you and your clients in putting forth the most up-to-date research utilizing CD Rom and West Law research to get the best possible results for your clients. We hope that you contact NLPA the next time you have a client who is in need of such assistance.

NLPA WE CARE, WE LISTEN, WE GET RESULTS!!