

Richard W. Vollmer, Jr.
Southern District of Alabama

*But [] my hands are tied and I have to follow the Guidelines I intend to sentence at the low end of the Guidelines, Counsel, because, as you, I think that the Guidelines are terribly high. . . . Ms. Coleman, I'm terribly sorry. I believe that there is some circumstances here where there should be some consideration taken for this.*¹

Appointed by: by President George H.W. Bush, 1990.

Military Service: U.S. Navy, 1944-46, 1950-52.

Law School: University of Alabama, LL.B. 1953.

Prior Legal Experience: Reams, Vollmer, Philips, Killion, Brooks & Schell, 1956-90.

Background and Reputation in the Legal Community

Richard Vollmer, Jr. practiced law as a name partner in a Mobile, Alabama law firm for over thirty years. His involvement in his community included membership in the Rotary Club, the Golf Club, and the Chamber of Commerce. He died in March 2003.

Lawyers surveyed “lavished high praise” on Judge Vollmer’s legal skills and compared him favorably to the well-liked Chief Judge Butler. Lawyers’ comments include statements like, “Judge Vollmer is a very good and fair judge.” Others praised him for his trial experience and management skills. “He’s a hands-on type of judge, but he gives lawyers some breathing room so they can do their job.” “He does not tolerate for a second, though, any trickiness or bad behavior by lawyers.” Both civil and criminal lawyers considered him fair and impartial. One defense lawyer noted that: “He has some sympathy for defendants, but he’s definitely not soft on crime.”

The case discussed in the Almanac of the Federal Judiciary for Judge Vollmer is *Ahmad v. Loyal*,² a 1991 decision on the application of the Pregnancy Discrimination Act. Judge Vollmer held for the employer, ruling that the Act did not prohibit an employer from withdrawing a job offer to an employee after it learned that she was four month pregnant on her first day of work. The judge said that the withdrawal was due to the timing of her leave, since it takes several months to train a new employee, and not due to the fact she was pregnant.

Jocinda Ingrid Coleman

Offense: Conspiracy to Possess with Intent to Distribute Crack Cocaine.

Sentence: 168 months.

Projected Release Date: October 3, 2010.

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Sentencing Transcript at 12-13, *United States v. Jocinda Ingrid Coleman*, No. 98-0085 (S.D. Ala. November 16, 1998).

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767 F. Supp. 1114 (S.D. Ala. 1991).

According to her defense attorney, Jocinda Coleman was “a girl that . . . has been born and raised in a family that [was] infested with drug problem[s] and selling drug[s].”³ In fact, her mother, step-father, and her older and younger brothers, were all sent to prison for drug activities. Even so, before her involvement in this case, she had worked a variety of low wage jobs as a cook and cashier, rather than take part in the family business, even though she lived in a trailer on the family property with her children.

According to the government, agents learned during the spring of 1998 that Jocinda’s family members were selling crack from the residences on their property which included a house, two mobile homes, and some non-operational vehicles. The government’s theory was that after some members of family went to prison, including Jocinda’s older brother, Patrick, who had been the manager and the “cook,”⁴ Jocinda’s mother, Melinda McGary, tried to run the operation. However, because of her well-known drinking problem, suppliers became hesitant to “front” the organization more cocaine. At that point in April 1998, Jocinda became involved and agreed to ensure the suppliers that payment would be prompt. This was particularly sad because her mother stated to the police that Jocinda had been planning on moving out of the trailer and off the property.



The police conducted two searches on the McGary/Coleman property; the first on April 20, 1998 and the second on April 28, 1998. In the first search, crack cocaine, marijuana, large sums of money were found in the main residence where Jocinda’s mother and step-father lived. Guns were also recovered from one of the trailers on the property. The second search resulted in seizures of crack packaged for sale and another handgun. After Jocinda’s arrest on the second search warrant,⁵ she agreed to cooperate. Although she was debriefed several times, she apparently had no information that the government did not already know. Thus, the government was unwilling to file a substantial assistance motion.

Jocinda pled guilty and stipulated with the government that the conspiracy involved in at least 1.5 kilograms of crack cocaine. The base Offense Level for this quantity of crack was 38. The government agreed as part of the plea to a three point reduction for acceptance of responsibility. At sentencing, the prosecutor kindly declined to ask for a leadership

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Sent. Tr. at 3.

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Patrick is referred to in the PSI as both Patrick Coleman and Patrick McGary. Another brother, referred to as both Roger and Roderick Coleman was also sent to state prison the same time as Patrick. Jocinda writes that Patrick received a seven year federal sentence and that Roderick received five years in state prison and 21 months on federal charges. April 5, 2007 letter to author at 1 (on file with author).

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Jocinda was arrested on state charges after the first search but was released. Those charges were dismissed as part of the resolution of the federal case.

enhancement role that might otherwise have been applicable, and in addition, did not oppose application of the safety-valve, even though a gun was allegedly found in her bedroom.⁶

Jocinda had no prior criminal history besides an unpaid ticket for driving without a license and thus was sentenced in Criminal History Category I. Even with a two-point reduction for the safety-valve, her adjusted Offense Level was 35 with a corresponding sentencing range of 168-210 months.

At sentencing, Jocinda said that she was sorry for what she had done and for her behavior towards the government agents when she first got arrested. She said, "I shouldn't have acted like that. If I knew then what I know now, I wouldn't have. I'm so sorry, not only that I hurt other people, I hurt myself and my children. And I love them so much, and I'd do anything in the world to see them again."⁷

Judge Vollmer responded to both the defendant and her attorney's pleas for mercy by saying

As I view it, my hands are tied. I have no authority. The problem with this sentence is a result of legislative activity, legislative activity which says everyone should be treated the same way . . . I have a book, and everyone has a book now. . . . And its not because I don't sympathize greatly with Ms. Coleman. But [] my hands are tied and I have to follow the Guidelines I intend to sentence at the low end of the Guidelines, Counsel, because . . . I think that the Guidelines are terribly high.⁸

The judge then went on to talk more generally about the problems with this case and others on his docket. First he noted that sentences for crack were much higher than for other types of crimes that to his mind were more dangerous.⁹ He said

I sentence in cases involving bank robbery where the usual sentence is 57 to 63 months. I think bank robbery is a terrible offense where people threaten folks in a bank who have no interest in being involved in any type crime at all.¹⁰

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Gun possession normally disqualifies a defendant from the safety valve, yet here she received a two point offense level increase for gun possession. The defense claimed that the gun belonged to other family members and that she had moved into the house after the arrest of other relatives. At sentencing, the possibility of a 5K2 departure to accommodate the unusual circumstances of the case was discussed by the judge and defense counsel. In the end, the threat that the government would then move for other enhancements was sufficient to discourage the defense from asking for a continuance. Sent. Tr. at 13-14. Thus, the gun possession increase and the safety-valve decrease essentially cancelled each other out in computing her Guideline range.

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Sent. Tr. at 9.

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Sent. Tr. at 10, 12.

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He said in pertinent part, "This Court, and I think courts throughout this land and the judges of those courts are very concerned about the individuals being sentenced by them, as much concerned as I am. And it concerns me that the sentences in this case for drugs of this type are more substantial than in any other type drugs - not drugs but in other types of crimes and in other type drugs other than crack cocaine. Sent. Tr. at 11.

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Having just sentenced Jocinda's mother and step-father a few weeks earlier, the judge also was disturbed that while there is an increase of penalty in cases where parents "bring their children into a crime," there was not a likewise decrease for a child who takes an active part in her parents' enterprise.¹¹ Judge Vollmer concluded by telling the defense attorney that the proper venue for change was Congress. There needs to be "some activity with the Legislature to provide the courts with some authority to reduce these sentences. . . . These are the facts of the case, and these are the matters on which I must sentence. . . . It's not because I want to sentence. . . . But if my hands are tied and I have to follow the Guidelines, then the problem is with the Guidelines and not with your presentation here today. I disagree with the Guidelines, but I am an officer of the Court just as you are, and I must follow the Guidelines."¹²

Finally, Judge Vollmer addressed Jocinda directly. He said to her, "Ms. Coleman, I'm terribly sorry. I believe that there is some circumstances here where there should be some consideration taken for this."¹³

Jocinda never knew her father, who she reports was killed in a shooting two months before her birth. She started smoking marijuana at age fifteen and admits she was using up to two ounces a day. She never finished high school because of poor grades and her drug abuse. At the time of her sentencing, she was twenty-one years old, a mother of two, and pregnant again. She delivered her third child while in the county jail and had to separate from him one day after delivery.¹⁴

Jocinda writes from prison that she doesn't know why her step-father received such a slight punishment but speculates that the government thought her mother was running the show. She blames an informant that she had recently broken up with for falsely claiming that Jocinda "started running things."¹⁵

Prison has been hard for Jocinda. She writes that she is battling depression and was placed on suicide watch at one point.¹⁶ Her children live with her sister-in-law in California. One of three children is also fighting depression on occasion but the other two are on honor roll. Jocinda is waiting for a drug treatment program but she has completed her G.E.D. and many

Sent. Tr. at 11.

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Jocinda's mother, Melinda McGary, received 210 months. Her step-father, Bernard McGary, received just 21 months on a charge of Withholding Information on a Crime. The counts charging him with conspiracy and possession with intent to distribute were dismissed by the government.

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Sent. Tr. at 13-14.

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Sent. Tr. at 13.

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March 5, 2003 letter from Jocinda Coleman to author (on file with author).

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April 5, 2007 letter to author at 1 (on file with author).

16

Id. at 2.

classes including accounting and medical terminology and she is now looking into college classes.¹⁷

Compiled from PSI, Sentencing Transcript, PACER docket sheet, and inmate letters.