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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF MONTANA**
MISSOULA DIVISION

11 UNITED STATES OF AMERICA,)
Plaintiff,))
12 vs.) No. MJ 15-70-M-JCL
))
13 SHALAKO JAMES KATZER,) **TRANSCRIPT OF SENTENCING**
Defendant.))
14 _____)

15
16 **BEFORE THE HONORABLE JEREMIAH C. LYNCH**
17 **UNITED STATES DISTRICT COURT MAGISTRATE JUDGE**
FOR THE DISTRICT OF MONTANA

18 Russell Smith United States Courthouse
19 201 East Broadway
Missoula, Montana 59802
20 Monday, May 23, 2016
14:05:56 to 14:13:57
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24 Proceedings recorded by machine shorthand
25 Transcript produced by computer-assisted transcription

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APPEARANCES

| | |
|--------------------|--------------------------------------------------------------------------------------------------|
| For the Plaintiff: | MR. W. ADAM DUERK Special Assistant U.S. Attorney P.O. Box 8329 Missoula, Montana 59807 |
| For the Defendant: | MR. ERIC RYAN HENKEL Attorney at Law P.O. Box 16960 Missoula, Montana 59808 |

CONTENTS

| | |
|------------------------------|----|
| Proceedings | 3 |
| Reporter's Certificate | 10 |

REPORTER'S NOTE: "Uh-huh" and "Um-hmm" indicate affirmative responses. "Huh-uh" and "Hm-umm" indicate negative responses.

PROCEEDINGS

(Open court.)

(Defendant present.)

THE COURT: Good afternoon. Please be seated.

This is the time set for sentencing in *United States of America v. Shalako James Katzer*, Criminal Cause MJ 15-70-Missoula.

And, Mr. Duerk, good afternoon. I take it you're prepared to proceed on behalf of the government?

MR. DUERK: Good afternoon. Yes, Your Honor.

THE COURT: Mr. Henkel, good afternoon. Mr. Katzer, good afternoon. Both of you are prepared to proceed?

MR. HENKEL: Yes, we are, Your Honor.

THE COURT: All right. If you would come forward to the podium, please?

MR. HENKEL: (Complied with request.)

THE DEFENDANT: (Complied with request)

THE COURT: Now I did have a presentence report prepared by probation, Ms. Keiley in particular, and are there any objections to the presentence report? It was noted there weren't any, but that has not changed?

Mr. Duerk?

MR. DUERK: Correct, Your Honor.

THE COURT: Mr. Henkel?

MR. HENKEL: That's correct.

1 THE COURT: All right.

2 Then I will hear from you first, Mr. Henkel,
3 regarding a sentence for Mr. Katzer.

4 MR. HENKEL: Thank you, Your Honor.

5 We're going to ask that you don't go beyond what's
6 stated in the plea agreement, Your Honor, which is \$10,000 of
7 restitution and one year of unsupervised probation.

8 I'm going to keep my comments here short and sweet
9 because I think this case is very simple. And what I want to
10 point out is that the PSR correctly acknowledges -- I think
11 the United States sentencing guidelines do not apply to this
12 offense, but what the PSR does do and I agree with is there
13 are certain guideline provisions that would be applicable if
14 the guidelines did apply.

15 And the one that I think encapsulates the essence of
16 this case is 5K2.11, which authorizes sentencing departures
17 based upon, quote-unquote, lesser harm. And what that
18 provision actually authorizes is a departure in circumstances
19 where a defendant commits a crime in order to avoid a
20 perceived greater harm.

21 I'm sure you're familiar with the facts of this case
22 now. They're not complex. Mr. Katzer was in a camp with his
23 family, with his friends, and a grizzly bear approached their
24 camp. Obviously a very difficult situation to be in, and we
25 can certainly understand why he would have perceived a harm to

1 friends and family at that point in time.

2 I think we can also agree that it was not
3 objectively reasonable for him to keep eyes on the bear and
4 follow it out of camp. He acknowledges that he should have
5 left that to his brother or just not really cared about what
6 his brother was doing and gone and tried to find the people in
7 his party who were unaccounted for and warn other campers. So
8 I do think that his initial intent was good; it's just the way
9 he carried out the plan was not objectively reasonable.

10 Mr. Katzer is, by all accounts, an upstanding
11 citizen -- no criminal history, excellent employment record --
12 and really is the type of person who we typically don't see in
13 this courtroom, and he certainly is the type of person who you
14 won't see back in this courtroom.

15 So for those reasons, we'd ask the Court to stick to
16 the plea agreement and go no further with \$10,000 of
17 restitution and one year of unsupervised probation.

18 THE COURT: All right. Thank you.

19 Mr. Katzer, you have an opportunity to address me if
20 you choose to.

21 THE DEFENDANT: Yes, Your Honor.

22 First, I'd like to say I am sorry about everything
23 that did take place last Memorial Day. Looking back on it,
24 and I've had a lot of time, I initially was -- it was very
25 scary, and I think I more acted out of just -- just reacted, I

1 guess is what it was, before really giving it much thought,
2 which, I was scared. I was scared for people that weren't,
3 weren't around in our group. I knew that my boy and others
4 were running around down by the river. There's other campers.

5 Anyways, I do wish that I would have done something
6 different and just let my brother take care of the situation
7 and for me to go get everybody else who was in our party and
8 get us to a safe place and let other campers know.

9 I think I've learned from it. And, again, like I
10 say, I am sorry, and I am, I am prepared to take whatever you
11 sentence me with.

12 THE COURT: All right. Thank you.

13 Mr. Duerk.

14 MR. DUERK: Your Honor, the United States doesn't
15 disagree with anything offered by defense counsel nor the
16 defendant. It's clear that he intends to pay his debt to this
17 country, and we agree with that, and we defer to your
18 discretion on whatever that final amount would be. I offer
19 that there was a plea agreement reached in this case in the
20 amount of \$10,000. However, we have great faith in the
21 Court's discretion here.

22 Thank you.

23 THE COURT: All right. Thank you.

24 As I mentioned when we met last time, I am not
25 accepting -- I accepted the agreement, but the terms are

1 discretionary with me.

2 Now having considered all of the factors I am to
3 consider, actually, under 3553 of Title 18, which informs my
4 decision, I am going to sentence you, Mr. Katzer, to six
5 months' imprisonment and require \$5,000 in restitution,
6 together with a \$10 special assessment fee.

7 I, as I explained to you last time, I do not have to
8 follow this. And this sentence, I find, is absolutely
9 necessary to promote -- to reflect the seriousness of this
10 offense and provide just punishment for the offense. The
11 account you gave me differs from the account that I read in
12 the complaint or in the information. You went out of your way
13 to kill this bear.

14 But the most important thing here is it is going to
15 stop. And, unfortunately, you may be the first example, but
16 the unnecessary killing of these threatened species is going
17 to stop. And you, sentencing you to this is necessary to
18 deter all those individuals who might undertake or engage in
19 the same conduct of I guess what they consider a sport.

20 But this was not a self-defense situation at all.
21 You didn't -- you pled guilty to it, and I don't take any
22 self-defense argument into consideration. What I am telling
23 you, and the general public at large, is this is going to
24 stop, and you're going to be the first example, and that's the
25 sentence I impose.

1 Any reason, Mr. Henkel, why -- any legal reason why
2 this sentence should not be imposed?

3 MR. HENKEL: Your Honor, I would ask the Court,
4 would the Court still consider letting him withdraw the plea?

5 THE COURT: No. Why would I let him withdraw the
6 plea at this point in time?

7 MR. HENKEL: Okay. Well, you had indicated at his
8 change of plea that you did have the discretion to do it.

9 THE COURT: I do, but I'm not going to allow him to
10 withdraw his plea.

11 This was an unnecessary killing of this bear, a
12 threatened species. And I would point out, where you killed
13 the bear, there is probably 46 of them left in existence. The
14 government has spent over \$30 million to try to restore that
15 bear population. And you and your brother -- I'm surprised
16 the brother isn't charged here, to be quite frank.

17 There is no more of it. And people have to
18 understand -- just because there's a lot of discussion about
19 these bears being removed from the endangered species list,
20 that they're fair game -- they are not fair game, particularly
21 in that population.

22 Any legal reason why this sentence can't be imposed,
23 Mr. Henkel?

24 MR. HENKEL: No, Your Honor.

25 THE COURT: All right. Thank you.

1 Mr. Duerk?

2 MR. DUERK: No, Your Honor.

3 THE COURT: All right. That is my sentence. And
4 the probation -- I am going to allow you to self-report. Once
5 the Bureau of Prisons decides where you will be housed,
6 probation will keep in contact with you and also give you
7 directions as to how you may pay -- how you shall pay
8 restitution.

9 The Court stands in recess.

10 THE CLERK: All rise.

11 (Proceedings were concluded at 14:13:57.)

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REPORTER'S CERTIFICATE

I, JoAnn Corson Bacheller, a Registered Diplomat Reporter and Certified Realtime Reporter, certify that the foregoing transcript is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription; that after being reduced to typewriting, a certified copy of this transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Missoula, Montana this 23rd day of May, 2016.

/s/ JoAnn Corson Bacheller

JoAnn Corson Bacheller
United States Court Reporter