

MAGISTRATE JUDGE BENTON

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	NO. CR 03-539 MJB
)	
Plaintiff,)	
)	
vs.)	DEFENDANT'S SENTENCING
)	MEMORANDUM
DANIEL PHILLIPS,)	
)	
Defendant.)	
_____)	

Daniel Phillips, by his attorney, Carol Koller, submits this memorandum in mitigation of sentencing, and in support of his request that this Court follow the recommendation of the government and the United States Probation Department and sentence Daniel Phillips to a five year term of probation, to terminate when Mr. Phillips has paid his restitution in full.

I. BACKGROUND

Daniel Phillips has entered a plea of guilty to the misdemeanor offense of willful failure to pay child support. Much civil litigation has preceded this prosecution, in regard to the exact amount of child support arrearage due, and what state is entitled to make this determination. For the purposes of this case, the parties have agreed that the

1 appropriate amount of restitution is \$36,096, as determined by the most recent State of
2 Washington order.

3 Mr. Phillips is a resident of Shawnee, Kansas, a suburb of Kansas City, Kansas.
4 He has lived in the greater Kansas City, Missouri/Kansas City, Kansas area for almost
5 his entire life, with the exception of four years of residence in Grants Pass, Oregon, in
6 the early to mid-1980s. Mr. Phillips has three children, [REDACTED], who is 25 years
7 of age, and whose letter is attached hereto as Exhibit 1, [REDACTED], 20 years of age,
8 and [REDACTED], also age 20. There has never been any contested issue
9 regarding support to Mr. Phillips' daughters, who were born of his marriage to Nancy
10 Sypkens, which ended in May 1983. [REDACTED] is the subject of the child
11 support order upon which the instant prosecution was based. Daniel Phillips married
12 Kimbra Martin, in 1983, and the couple divorced in 1989, when [REDACTED]
13 was 11 years of age.

14 At the time of his marriage to Kimbra Martin, Daniel Phillips was employed as an
15 attorney. After their divorce, he met his child support obligations faithfully, while
16 employed at various law firms. However, his legal career began to flounder in 1993,
17 when he was asked to leave a partnership at a large law firm in Kansas City, Missouri.
18 For two years thereafter, Mr. Phillips struggled unsuccessfully with solo practice, where
19 he found it almost impossible to attract business. Thus, in mid 1995, at a time when new
20 businesses were succeeding and thriving, he became attracted to a business proposition
21 involving recycling old railroad ties into new ones, generating electrical power during
22 the process. The company was called Reconstituted Technology Inc. (RTI).

23 Mr. Phillips' difficulty making his support payments began with his association
24 with RTI. In retrospect, Mr. Phillips very much wishes that he had not spent the
25 ensuing eight years working on the project. However, during those eight years, there
26 were many times when it realistically appeared that real success was just around the

1 corner. The railroads were interested, General Electric was interested, and start up
2 financing seemed imminent. Like many start up companies, this one foundered on the
3 shoals of the stock market plunge of early 2001, followed by the 9/11 disaster. Even
4 after that, it appeared at times that the project would be funded. Due to the continued
5 encouraging signs, and the fact that Mr. Phillips had so much time and energy invested
6 in the project, it was two more years before he was able to recognize and acknowledge
7 that it might never succeed.

8 Thus, for eight years, Daniel Phillips had the hope of a good income on his
9 horizon but virtually no current income. At one point, while working for no pay at RTI,
10 he cleaned buildings at night in order to earn a small income. Because he could not pay
11 child support, he put the ownership of RTI in trust for his three children and the daughter
12 of his then wife. It was his hope that his inability to pay child support would be more
13 than compensated by the income and assets Mr. Phillips believed his children would
14 receive from a very successful business.

15 Daniel Phillips realizes that his obligation to pay child support was not vitiated by
16 the formation of the trust for his child in a company that was never profitable. Although
17 in other circumstances he would have been free to take the risk of working at a startup
18 company for little or no income, as a divorced parent with child support obligations, he
19 could not impose that choice upon his son. By pleading guilty, Mr. Phillips has
20 indicated that he recognizes his mistake, and is willing to make his best efforts to pay the
21 restitution. To that end, he has recently made a \$300 payment to the Washington Child
22 Support Enforcement Division.

23 Mr. Phillips is not well off, nor has he been for the past decade, notwithstanding
24 his wife's beliefs to the contrary. He is currently employed in a paralegal type position
25 with a real estate company, where he earns a small income, and is provided with the
26 townhouse in which he resides with his current family. He hopes to regain his license to

1 practice law (provided that this conviction does not prevent his reinstatement to the
2 Missouri bar) to increase his usefulness to and compensation from his current employer.
3 He also hopes that his relationship with his son, which has been severely strained by the
4 financial haggling of the parents over the past eight years, can be repaired and restored.
5 Mr. Phillips wants the best for all of his grown children and to paraphrase his words in
6 his statement to the Court, had he known it would all turn out the way it did, he would
7 not have proceeded in the manner that he did.

8 **II. APPROPRIATE SENTENCE**

9 The parties and the probation office agree that Mr. Phillips should be sentenced to
10 a term of probation on the condition that he make his best efforts to pay the agreed
11 restitution. This is an appropriate sentence in light of Mr. Phillips' absence of a criminal
12 record, and his good faith intention, albeit futile, that his son be a beneficiary of the
13 business which Mr. Phillips sincerely and reasonably expected would succeed. Mr.
14 Phillips is currently impecunious, but is in the process of re-structuring his life after
15 acknowledging that continuing his efforts for RTI was not the best course. If the Court
16 also follows the recommendation that Mr. Phillips' probation be terminated when the
17 restitution is paid, he will have every incentive to repay Kimbra Martin in the most
18 expeditious possible manner once he is in a better financial position.

19 DATED this 29th day of March, 2004.

20 Respectfully submitted,

21 s/Carol Koller
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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jeffrey Sullivan
Assistant United States Attorney
601 Union Street, Suite 5100
Seattle WA 98101

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

John McCarthy
United States Probation
701 Fifth Avenue, Suite 4100
Seattle WA 98104

s/Carol Koller
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