

UNITED STATES FEDERAL COURT
FOR THE DISTRICT OF MINNESOTA

United States of America,
Plaintiff,

-vs-

File No. CR.4-89-82(05)

John G. Lambros,
Defendant.

COPY

TRANSCRIPT OF PROCEEDINGS in the
above-entitled matter before the Honorable
Robert G. Renner on February 10, 1997 at
United States Federal Courthouse, St. Paul,
Minnesota, at 10:00 a.m.

APPEARANCES:

Douglas Peterson, Assistant United States
Attorney, appeared as counsel on behalf of the
Government.

Colia Ceisel, Attorney, appeared as
counsel on behalf of the Defendant.

REPORTED BY:

BARBARA J. EGGERTH, R.P.R.

67 TOTAL PAGES

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1 THE COURT: The Court has before it
2 the matter of the United States of America
3 versus John Gregory Lambros. Present and
4 before the court, representing the government,
5 is Mr. Douglas Peterson. Also present is
6 Colia Ceisel.

7 MS. CEISEL: It's Ceisel, Your
8 Honor.

9 THE COURT: And, of course, the
10 defendant, John Gregory Lambros.

11 Before the court commences with the
12 parties proceeding, I would ask if there is
13 anyone else who should be placed of record at
14 this time, whose name should be placed of
15 record. Mr. Peterson?

16 MR. PETERSON: Not to my knowledge,
17 Your Honor, no.

18 MS. CEISEL: Your Honor,
19 Mr. Lambros's parents are also present and he
20 has --

21 THE COURT: Excuse me. Would you
22 plan on using the microphone when you address
23 the court? I am having trouble hearing you.

24 MS. CEISEL: Yes, Your Honor.
25 Mr. Lambros's parents are also here, Your

1 Honor, and he has a motion before the court to
2 allow them to address the court.

3 THE COURT: I'll take it under
4 advisement. We'll see how things go.

5 MS. CEISEL: Thank you, Your Honor.

6 THE COURT: I am ready to commence
7 the court's part of this matter. I would ask
8 that you listen closely and I will tell you
9 that all parties will have an opportunity to
10 make their presentations, although the court
11 intends to limit oral presentations.

12 Before the court is the matter of the
13 United States versus John Lambros, Criminal
14 Number 4-89-82(05). It is necessary to
15 briefly review the procedural history of this
16 case. The defendant was previously convicted
17 in this court on four counts involving a
18 conspiracy to distribute cocaine. The
19 Honorable Diana Murphy sentenced the defendant
20 to two 120-month terms for Counts 2 and 3, a
21 360-month term for Count 4, and a term of life
22 imprisonment on Count 1. The defendant
23 appealed. Subsequently, the Eighth Circuit
24 affirmed all convictions, but vacated the life
25 sentence on Count 1 finding that while such a

1 sentence was permitted under the applicable
2 law, it was not mandatory as the Sentencing
3 Board had believed. The limited remand to
4 this court requires it to impose sentence
5 consistent with the version of 21 United
6 States Code, Section 841 (b) (1) (a) (2), in
7 effect as of February 27th, 1988, the ending
8 date of the cocaine conspiracy in which the
9 defendant participated. Despite the limited
10 nature of these proceedings, the defendant has
11 interposed numerous motions and supporting
12 papers requesting relief from resentencing.
13 Procedurally, these motions are somewhat
14 unorthodox in that they appear to be addressed
15 both towards convictions and sentences for
16 which the defendant is currently incarcerated
17 as well as the conviction for which he is
18 about to be sentenced. The defendant has
19 informally suggested that these motions be
20 considered under Federal Rule of Criminal
21 Procedure 33 as, quote, new trial, end quote,
22 motions. However, such motions would clearly
23 be untimely even if correctly denominated as
24 Rule 33 motions. Alternatively, the court can
25 simply dismiss all of the motions not directly

1 related to the proceedings without prejudice.
2 However, this would merely seem to ensure the
3 defendant would raise them again on appeal and
4 beyond, although many were previously
5 litigated and thus are procedurally barred.
6 The defendant is in agreement with -- I am
7 sorry -- the court is in agreement with the
8 view expressed in United States versus
9 DiBernardo, a 1989 case decided by the
10 Eleventh Circuit Court of Appeals. DiBernardo
11 held that a motion could properly be
12 considered under 28 United States Code,
13 Section 2255, if imprisonment based on a
14 previous adjudication of guilt was imminent.
15 While defendant has not technically been in
16 custody on Count 1 since the Eighth Circuit's
17 remand, such custody has indeed been
18 imminent. Therefore, with the exception of
19 certain preliminary matters, defendant's
20 motions will be treated as arising under 28
21 United States Code, Section 2255, and subject
22 to the statute -- I am sorry -- the strictures
23 of that statute.



24 The court will proceed as follows.

25 First, the defendant's motion for a competency

1 hearing and/or the request that his family
2 members and associates be permitted to testify
3 as to his competency is denied. 18 United
4 States Code, Section 4241, requires that a
5 hearing be held only when the court finds
6 there is a reasonable cause to believe that
7 the defendant may be suffering from a mental
8 disease or defect which renders him unable to
9 understand the nature of the proceedings
10 against him or to assist properly in his
11 defense. By order dated October 30, 1992,
12 Magistrate Judge Franklin Noel judged
13 defendant competent to stand trial after
14 conducting a hearing. By order dated
15 January 19, 1994, Judge Murphy denied the
16 defendant's motion for a second competency
17 hearing finding that his behavior at trial
18 displayed competence. These findings were
19 affirmed by the Eighth Circuit Court of
20 Appeals which noted how defendant had lucidly
21 and ably argued precisely how his delusional
22 condition affected his behavior. The
23 proceedings were delayed by several months to
24 permit the defendant's examination by a second
25 expert. This expert also concluded that the

1 defendant was competent. During the past
2 month, this court has reviewed the various
3 papers as submitted by the defendant, and
4 while some of the defendant's contentions are
5 bizarre and found to be without merit by a
6 previous court, defendant has displayed
7 intelligence and a rational appreciation for
8 the legal system and his role in those
9 proceedings. He is plainly competent.

10 Next, the defendant shall be permitted to
11 address the court regarding its various
12 motions. At the conclusion, the government
13 shall be allowed sufficient time to respond.
14 The parties shall not exceed one-half hour to
15 present their arguments. Defendant's
16 attorney, Colia Ceisel, shall be allowed to
17 address the court at the conclusion of the
18 government's remarks.

19 The defendant's motions at this time are
20 denied. A written, detailed order to that 
21 effect will follow. 

22 At this time then, we will submit the
23 matter to the government for its remarks.

24 MR. PETERSON: Your Honor, I have
25 provided the court a fair amount of written