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January 7, 2005

Ninth Circuit Court of Appeals
For the United States
US Court of Appeals Building
95 Seventh Street
PO Box 193939
San Francisco, CA 94119-3939

Sent Certified Mail 7003 1680 0000 9914 8174

Re: *United States v. Sutcliffe*
Case No.: 04 73472
04-50189
U.S. Distinct Court Criminal Case No: CR02-350A-AHM

To Whom It May Concern:

This letter is being written to the Court of Appeal pursuant to the Ninth Circuit opinion of *United States of America v. Juan Benito Castro*, Case No. 03-50444, referencing to footnote "3".

In the *Castro* case, an appeal was filed involving both an alleged fatal variance between the indictment and the facts presented at trial and that his re-sentencing was unconstitutional. This Court rejected his fatal variance claim but addressed the issues raised by the *Blakely v. Washington* (124 S.Ct. 2531 (2004) case which, if applied to the United States Sentencing Guidelines ("USSG"), would hold that the judge-found facts causing the imposition of an enhanced sentence as violative of the Sixth Amendment. Of course, at that time, *Blakely* applied to the State of Washington. Subsequently, many Federal courts have applied the *Blakely* holding to the USSG including this very court in *United States v. Ameline* 376 F.2d 967 (9th Cir. 2004).

The *Castro* court also recognized that it would "ordinarily stay further proceedings" where the Supreme Court had agreed to hear cases that would effect the outcome of, for example, the holding in *Ameline* and, in fact, the Supreme Court recently conducted oral argument in the *Booker* and *Fan Fan* cases, presumably, to resolve the question as to whether, and to what extent, the *Blakely* case applies to the USSG.

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However, this Court expressly stated that a stay of further proceedings was inappropriate where the circumstances demonstrate that the "portion of the sentence that is clearly unaffected by *Blakely* or *Ameline* has expired or will expire shortly." In the *Castro* matter, this Court stated, "[H]ad *Castro's* sentence been based only on the facts that were found by the jury and not on those found by the district judge, he would already have completed serving his sentence."

In the instant case, even before I went to trial and was ultimately convicted, **I had served all of the time I could have served based on the facts found by the jury.** The only reason why my incarceration continues is because of the judge-found "facts" that were and are continuing to be used to enhance the maximum sentence which could have been imposed based on the jury's findings. Thus, like *Castro*, the circumstances in my case should prompt this court to act on the sentencing issues notwithstanding the pendency of the Supreme Court's decision on *Booker* and *Fan Fan*.

To bring this issue to the Court's attention, I filed an emergency petition for writ of mandamus (Case No.04 73472) seeking to compel the trial court to obey the law as set forth in the *Ameline* decision - which writ was denied twice (once on the original writ and once on the request for re-hearing). The basis of the denial was that I had an "alternative remedy" - that being to seek bail on appeal which I knew would be denied as the trial judge at issue over-turned the initial grant of bail (by another judge) and who subsequently denied bail on two more occasions (not counting the request for bail on appeal). Thus, in fact and reality, there was no "alternative remedy" at the time I filed the writ and the request for rehearing. I believed I had made this clear to this Court, but apparently this Court felt that was of no consequence.

More to the point, however, is not only has the Ninth Circuit applied *Blakely* to this District via the *Ameline* decision, but **the trial court, itself, admitted** in writing that based on the state of the law (which I believed [and apparently it believed] it was legally obligated to follow - hence the writ of mandate) **the sentence was illegal.** I have attached a true and correct copy of the court's "admission" of illegality hereto as Exhibit "1".

Thus, not only has the Ninth Circuit held via *Ameline* that my sentence enhancements were/are illegal; not only has the Ninth Circuit held that it should not stay a decision on the enhancement issues when that portion of the sentence unaffected by *Blakely* and *Ameline* has expired (as in my case) and, thus, the Ninth Circuit Court of Appeals
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Court should act to remand the case back to the district court; and not only has the trial judge, himself, expressly admitted and acknowledged that his imposition of sentence was illegal, I still sit here incarcerated based on an illegal sentence.

This raises two additional issues I would request this Court consider.

The first, is that, as I write this letter, I am presently incarcerated at Metropolitan Detention Center in Los Angeles; a facility which is inappropriate because it is a "holding" facility for those persons pending trial or awaiting certain procedures that would require their presence at the district court. I was shipped to the United States Penitentiary at Lompoc, another facility for which I was "unqualified" by the Bureau of Prison's own guidelines to be incarcerated at, because someone had issued a "waiver" thus "permitting" me to be sent to a facility for which I should not have been sent. All of my possessions including, but not limited to, legal papers and research, are at Lompoc. I understand through the "grapevine" that I will be transferred back to Lompoc and may, in fact, have been returned there prior to your receipt and review of this letter. I would, therefore, request that you send any response to both the address noted above and to the USP at Lompoc whose address is: Federal Correctional Complex, Lompoc USP, 3901 Klein Blvd, Lompoc, California 93436.

Clearly, I should be sent to a facility for which I am properly designated and qualified under the U.S. Bureau of Prisons own guidelines, but to send me to Lompoc is merely part and parcel of the clear desire to see that I suffer the maximum "punishment" whether legal or not.

The second and more significant issue is that of my "appointed" appellate attorney, Richard Rome.

The United States Federal Public Defender's Office ("FPD") disqualified itself to avoid being held and/or found incompetent. Apparently, however, they "appointed" Mr. Rome to represent me on appeal. Mr. Rome has told me he was appointed by the Ninth Circuit. In an ORDER to appoint counsel, filed 06.24.2004, in the Ninth Circuit it stated that the Clerk "shall serve a copy of this order ...on [the] Federal Public Defenders Office...who will locate appointed counsel [for the defendant]. Round and around we go and here I sit and sit and sit.

My concern is that Mr. Rome just recently filed a "brief" on appeal related to the recent denial of bail by the trial court. The entire points and authorities and argument in this brief is less than 2 pages; Mr. Rome neither argued in court, nor in his brief, any of the factors that should have been considered when

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determining whether bail was appropriate. He neither raises any differences or discrepancies in the "facts" or "findings" previously made by the trial court and "incorporated" by osmosis in it's present decision of denial that have changed or which are different from any of the prior denials of bail, nor does he present any cogent arguments on the relevant issues thereby preserving them for higher court review, if any, should this Court deny this bail appeal. In addition, he has just now recently order the November 21, 2002 Bail Hearing Transcript. [As an aside, Mr. Rome cannot even get the name of the trial judge correct.]

The underlying case has numerous issues aside from the sentencing matters mentioned above. There are significant pre-trial issues such as jurisdiction and the very constitutionality of the law under which I was charged and convicted.

There are numerous pre-trial issues including but certainly not limited to speedy trial, and secret hearings violating due process that exist as well as the entire fiasco regarding the "issue of my incompetence" that delayed my trial further.

There are numerous errors that occurred during trial that must be raised on appeal.

Finally, there are certainly post-trial issues which should also be preserved and which are appropriate to raise on appeal.

Based on Mr. Rome's current 2 page "effort"; and based on the fact that Mr. Rome has continued to delay in seeking or obtaining the record on appeal; and based on the fact that Mr. Rome has expended less than 4 hours total in actual one-on-one time with me since his appointment (by whomever or whatever entity actually appointed him) - I have no confidence that he will adequately, much less competently, represent and preserve all of the issues on appeal. In fact, just the opposite; there is every reason to believe that Mr. Rome will continue to act in such a manner as to impose severe and significant prejudice to me and my case.

Therefore, I would request that this Court relieve Mr. Rome from his "appointment;" that I have new counsel appointed by other than the FPD which has a declared conflict and which appears to have appointed an attorney who can inflict the most prejudice on me rather than who can present a competent, professional and thorough effort on the issues on appeal (without causing the loss of these issues because they were not raised on appeal in the first instance). **In the interim, I would request**

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permission to submit my own brief on appeal for the denial of bail.

If this Court is not inclined to order the appointment of new appellate counsel, I would request that I be permitted to proceed on appeal (all of the appeals) *in sui juris*. As I see it, I can do no worse than the 2 page "brief" submitted by Mr. Rome and can certainly do better inasmuch as I would certainly include all of the legal issues on appeal that represent clear error and would mandate reversal of the conviction (at best) and/or, at the least, a new trial.

To summarize, I am requesting that this Court do or act on the following:

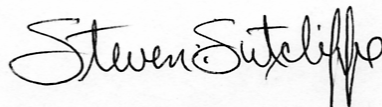
1. Acting pursuant to its own opinions in *Castro* and *Ameline*, immediately remand this matter back to the trial court.

2. Secondly, I am requesting that this court order the removal of Richard Rome as appellate counsel and to appoint, or cause the appointment, of replacement appellate counsel - and that this counsel be appointed by an entity which does not have an existing declared conflict with me.

Or, as an alternative to the Second request above, that this court relieve Mr. Rome and permit me to proceed *in sui juris*.

3. Finally, regardless of the removal of Mr. Rome and whether new counsel is appointed, I am requesting that I be permitted to file my own brief on appeal of the denial of bail on appeal. I would further request that I be provided reasonable time to prepare this brief, particularly if I am returned to the inappropriate facility of USP Lompoc where, if returned, I will undergo a period of time where access to even a telephone is precluded much less access to my legal documents and the law library. Furthermore, if I am not returned LOMPOC and kept at MDC, I require an order from the court to compel LOMPOC to return my legal documents so I may prepare any brief, *sui juris*.

Very truly yours,



STEVEN WILLIAM SUTCLIFFE

CC: U.S. Supreme Court

Judge A. Howard Matz
Elena Duarte, Esq. Asst. U.S. Attorney
Richard Rome, Esq.