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O'Melveny Achieves Sentence of No Jail Time for Gilbert Arenas

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On March 26, 2010, Judge Robert Morin of the Superior Court of the District of Columbia sentenced Gilbert Arenas to probation, community service, and 30 days in a halfway house, rejecting the prosecutors' request for jail time. O'Melveny partner Ken Wainstein and associate Jeff Nestler represented Arenas, a professional basketball player with the NBA's Washington Wizards team.

Recently, several high-profile professional athletes have faced potential jail time over criminal infractions, with mixed results. This result for Arenas is noteworthy because Wainstein and the O'Melveny team, members of both the Sports Practice and White Collar Practice Groups, were able to help the Wizards star avoid that fate through a strategy that included a detailed sentencing memorandum that presented a compelling portrait of Arenas' good character, buttressed by persuasive supporting documentation. Also key to the outcome was the presentation by O'Melveny's lawyers at the sentencing allocution, which effectively responded to the new allegations in the government's withering 26-page memorandum and persuaded the Court to reject the prosecutors' strong plea for jail time.

The case began in January 2010 when Arenas was charged with, and pled guilty to, carrying a pistol in the District of Columbia without a license. The charge arose out of an incident in December 2009 in which Arenas had four unloaded handguns in the Wizards' locker room in Washington, D.C. Two days prior to the incident, Arenas and teammate Javaris Crittenton had argued on the team airplane and exchanged "threats" to shoot each other,

including a “threat” by Crittenton to shoot Arenas in his surgically-repaired knee. That next Monday, Arenas arrived at practice and laid out his four unloaded handguns on Crittenton's chair with a note that read "Pick 1." When Crittenton walked into the locker room, Arenas indicated he was providing him the guns to carry out his “threat.” Crittenton responded by tossing Arenas' guns aside, saying that he did not need to use them, and pulling a gun of his own out of his locker.

The incident ended there, but team management learned about it and both Arenas and Crittenton were questioned about whether they had guns in the locker room. Arenas admitted having guns and turned them over, while Crittenton denied the allegation. Arenas self-reported to the authorities, and quickly pled guilty to a felony gun charge.

In preparation for sentencing, Wainstein and Nestler submitted a detailed sentencing memorandum advocating for a sentence of probation and community service. The goal of their memorandum was to provide the court with a clear understanding of Arenas' character and to dispel any mischaracterizations arising from the high-profile nature of the case. Their memorandum included nearly 35 letters of support from individuals with experiences ranging from brief encounters in which Arenas was generous with his time and attention, to long-term friendships that demonstrated the full depth of his loyalty and character.

Only three days before Arenas' sentencing, the government filed a 26-page sentencing memorandum asking the court to draw virtually every inference against Arenas. The memo argued that Arenas had acted maliciously — and not out of a misguided effort to play a prank — in placing the guns on Crittenton's chair; that he had tried to orchestrate a cover-up to protect himself; and that he had not accepted responsibility or shown true remorse about his offense. The press gave broad coverage to the government's aggressive memorandum and detailed all of the new allegations.

The government's late filing put the defense at a significant disadvantage and added to the importance of O'Melveny's performance at the sentencing allocution. During sentencing, Wainstein had the opportunity to respond to the government's memorandum, in order to rehabilitate Arenas in the eyes of the judge and the public and to correct the inaccurate perception it had created.

In presenting his sentence, the judge sided with the defense regarding the critical mitigating factors in the case. Judge Morin found that Arenas' intent was not violent, and he rejected the government's cover-up argument, finding that "the so-called cover-up was not an attempt... to avoid responsibility, but an attempt by [Arenas] to take full responsibility for the incident... and absolve [Crittenton]..." He further told Arenas "[y]ou've demonstrated genuine remorse for what you've done and how it's affected your community and the people who have looked up to you." Finally, Judge Morin cited the many letters attesting to Arenas' service to the community and charity to others over the years, explaining that "[t]he individuals who

have written, who you have helped... show that at core you're a decent person, capable of great generosity and kindness — especially to young people who are most in need." Rejecting the government's request for jail time, he then imposed a probationary sentence with 30 days in a halfway house and a community service component that takes advantage of Arenas' ability to use this experience to teach youth about the dangers of firearms and violence.

The sentence came as a surprise to the prosecutors, as well as to many media outlets who had predicted that Mr. Arenas would serve jail time. After sentencing, the media praised the O'Melveny team's impressive work with headlines such as "Wainstein Keeps Gilbert Arenas Out of Jail."

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