

## Marcus Ellis Case Scenario

Marcus Ellis was a 38-year-old small business owner in Arizona who ran a modest pet shop specializing in reptiles and amphibians. Over the years, Marcus began selling more unusual species, including African grey parrots, ring-tailed lemurs, and certain endangered tortoises. Although he claimed he believed the animals were legally imported, federal wildlife investigators had been monitoring shipments for months. In early 2023, Marcus was arrested and charged under the Lacey Act with six felony counts of illegal transport and sale of protected wildlife.

Because Marcus had no savings and was unemployed when he was arrested, the court appointed John Kearns to represent him. Mr. Kearns had been practicing law for over 15 years, mainly handling lower-level criminal cases and some family law matters. He had never defended a federal wildlife trafficking prosecution.

At the initial detention hearing, Mr. Kearns briefly met Marcus in a small conference room. He reassured Marcus that although the charges sounded serious, they were often resolved without jail time if the defendant cooperated. Marcus recalled feeling relieved by this assurance, though he didn't fully understand the maximum penalties he was facing.

Over the next two months, the U.S. Attorney's Office produced thousands of pages of discovery materials, including shipping records, email correspondence, and audio recordings of calls between Marcus and suppliers overseas. Mr. Kearns told Marcus he would review the discovery and get back to him. Weeks passed with little contact. When Marcus called to ask questions about the documents, Mr. Kearns's office often said he was in court or busy with other clients. At one point, Marcus requested copies of the shipping records to review himself, but he never received them.

Eventually, Mr. Kearns scheduled a meeting in the jail to discuss the government's evidence. He told Marcus that the prosecution had compiled a strong case, including clear proof the animals were protected species and that Marcus had sold them to private collectors. Marcus said he never knowingly sold anything illegal, but Mr. Kearns explained that ignorance of the law was unlikely to succeed as a defense. He discouraged Marcus from thinking about going to trial, saying it would probably lead to a much longer sentence if he lost.

Not long after, Mr. Kearns brought Marcus a plea agreement. Under its terms, Marcus would plead guilty to three of the six felony counts, and the government would recommend a sentencing range of 41 to 51 months in prison. Mr. Kearns advised Marcus that this was a reasonable outcome and that the court generally followed these recommendations. Marcus was worried about the possibility of prison but did not feel he had any real alternative. He signed the agreement.

Leading up to sentencing, Marcus hoped his attorney would gather letters from his family and friends and perhaps ask experts to explain his mental health struggles and good-faith efforts to comply with the law. He had been seeing a counselor for anxiety and depression, and he thought this information might help the judge understand why he made poor business decisions. However, Mr. Kearns did not contact Marcus's family or therapist. He did not request any evaluations or expert reports. A few days before the hearing, he filed a short sentencing memorandum stating Marcus was remorseful and had no prior record.

On the morning of sentencing, Marcus watched the prosecutor argue that his conduct had caused significant harm to endangered species and that a high-end sentence was necessary to deter others. When it was Mr. Kearns's turn to speak, he briefly stated that Marcus accepted responsibility and asked for the low end of the range. Marcus was not sure what to say himself and did not make much of an allocution statement. The judge imposed 48 months in federal prison and ordered restitution for the value of the animals.

While in prison, Marcus began reading about similar cases and learned that some defendants had received probation or much shorter sentences when their attorneys presented detailed mitigation materials or challenged the valuations of the wildlife. He also discovered that experts sometimes testified that certain animals were misclassified under federal law.