

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No.: 03-234 (JDB)
	:	
JAMES W. EDWARDS	:	

GOVERNMENT’S MEMORANDUM IN AID OF SENTENCE EVALUATION

The United States, by and through its attorney, the United States Attorney for the District of Columbia, submits this Memorandum in Aid of Sentence Evaluation. On September 30, 2005, the Court of Appeals remanded this case to this Court “for the limited purpose of allowing it to determine whether it would have imposed a different sentence, materially more favorable to the defendant, had it been fully aware of the post-Booker sentencing regime.” This Court subsequently directed the parties to brief the issue. The government, after reviewing the transcript of the defendant’s April 13, 2004 sentencing hearing, the Presentence Investigation Report of January 7, 2004, and United States v. Coles, 403 F.3d 764 (D.C. Cir. 2005), states as follows:

BACKGROUND

1. The defendant was convicted on January 22, 2004, following a jury trial of Unlawful Possession with Intent to Distribute Phencyclidine. The jury acquitted the defendant of Using, Carrying, and Possessing a Firearm during a Drug Trafficking Offense, and was unable to reach a unanimous verdict on the charge of Unlawful Possession of a Firearm and Ammunition by a Person Convicted of a Crime Punishable by Imprisonment for a Term Exceeding One Year. The government subsequently chose not to retry that charge.

2. The Presentence Report found the Base Offense Level to be 20, for 58.9 net grams of a mixture and substance containing phencyclidine. Two points were added to the Base Offense

Level for the defendant's possession of a firearm in connection with the distribution offense. No adjustment was made for acceptance of responsibility, as defendant proceeded to trial and maintained that he was not guilty. Defendant's total offense level thus was 22. Defendant had a criminal history computation score of 10, for a criminal history category of V, with a sentencing guideline range of 77 to 96 months of imprisonment. According to the Report, no objections were presented by the parties, nor were any reasons for departure identified.

3. On April 13, 2004, the Court conducted a sentencing hearing. At that time, the defendant objected to the two level increase for possession of the firearm. Transcript at 2. After hearing arguments of counsel, the Court found by a preponderance of the evidence that the defendant had possessed a firearm during commission of the distribution offense. Transcript at 20-21. In so ruling, the Court noted that the defendant was arrested while in the driver's seat of a car, that two guns were recovered from under that seat, and that two officers saw the defendant make downward movements consistent with efforts to push the guns under the seat. Transcript at 18-19. The Court also considered that the defendant previously had been convicted of possessing a handgun as evidence bearing on his knowledge, intent, and absence of mistake in possessing the guns found in the car. Transcript at 19-20.

4. In allocution, the defendant asked the Court to consider defendant's history of drug use and lack of educational opportunities and requested a sentence at the low end of the guidelines range. Transcript at 21. The government asked the Court to consider the defendant's persistent failure to abide by the Court's orders and take advantage of the opportunities previously provided him, and requested a sentence at the higher end of the guidelines range. Transcript at 22-24. The Court sentenced the defendant to 79 months imprisonment, "near, but not at, the very bottom of the

guideline range.” Transcript at 29. In so doing, the Court considered the serious nature of the offense, defendant’s lengthy criminal history, lack of employment history, extensive history of drug use, his family support and desire to be a good father to his young child, the fact that defendant did not seriously contest his possession of drugs at trial, the interests of the criminal justice system and the interests of defendant’s rehabilitation and future. Transcript at 27-29.

ARGUMENT

5. Before January 12, 2005, and in the absence of factors that would have justified a departure, a district court was bound to sentence a defendant within the range calculated under the United States Sentencing Guidelines. On that date, however, the Supreme Court held, in United States v. Booker, 125 S. Ct 738 (2005), that certain applications of the United States Sentencing Guidelines violated the Sixth Amendment principles articulated in Blakely v. Washington, 124 S. Ct. 2531 (2004) (holding that a mandatory state sentencing scheme under which a sentence is increased based on factual findings by a judge violates the right to trial by jury). As a remedy, the Court invalidated the statutory provision that made the federal Guidelines mandatory, 18 U.S.C. § 3553(b)(1), thus making the Guidelines “effectively advisory.” Booker, 125 S. Ct. at 746. Although the Guidelines are no longer mandatory, a district court must still “consult [the] Guidelines and take them into account when sentencing.” Id. at 767 (citing 18 U.S.C. §§ 3553(a)(4) & (5)). “Under this new sentencing regime, a sentencing court is required ‘to consider Guidelines ranges’ applicable to the defendant, but is permitted ‘to tailor the sentence in light of other statutory concerns as well.’” United States v. Coumaris, 399 F.3d 343, 351 (D.C. Cir. 2005) (quoting Booker, 125 S. Ct. at 757). Those other statutory concerns are expressed primarily at 18 U.S.C. § 3553(a). Booker, 125 S. Ct. at 757.

6. “A judge cannot satisfy [the duty to take the Guidelines into account] by a general reference to the entirety of the Guidelines Manual, followed by a decision to impose a ‘non-Guidelines’ sentence” (that is, a sentence that is neither within the traditionally calculated Guidelines range nor imposed pursuant to departures authorized by the Guidelines or related policy statements). United States v. Crosby, 397 F.3d 103, 111 (2d Cir. 2005). Thus, to comply with Booker, a sentencing court should first determine the applicable Guidelines sentence in the same manner as before Booker, including any departures that would be permissible under the Guidelines, and then after considering the Guidelines and all other factors in Section 3553(a), decide whether to apply the Guidelines sentence, or apply a non-Guidelines sentence. Id. at 111, 113. If the court decides not to apply the Guidelines sentence, it should explain on the record its rationale for varying from the advisory sentence. Id. at 116; see also United States v. Mares, 402 F.3d 511, 519 (5th Cir. 2005).¹ The final sentence will then be subject to review by the Court of Appeals for “reasonableness.” Booker, 125 S. Ct. at 765-766.

7. The position of the United States is that, absent highly unusual circumstances, the sentence in a criminal case should fall within the Guidelines range as determined by the Court, or be justified as a Guidelines-sanctioned departure from that range. In effect, the Guidelines should become the primary benchmark for reasonableness post-Booker. Unless sentencing courts adhere to such a benchmark, federal sentencing practices are in danger of reverting to the largely unfettered system that, before enactment of the federal Sentencing Reform Act (“SRA”) in 1984, had led to

¹ Although a sentencing court is no longer required to impose a sentence within the range of sentences articulated by the Guidelines, the Supreme Court did not change the statutory provisions that require a district court to “state in open court the reasons for its imposition of the particular sentence,” 18 U.S.C. § 3553(c), or to state in writing its reasons for imposing a sentence different from one within the calculated Guidelines range. See 18 U.S.C. § 3553(c)(2).

widespread disparity and uncertainty in punishment among defendants with similar criminal histories who were convicted of similar crimes. See Crosby, 397 F.3d at 113-114 (“[I]t would be a mistake to think that, after Booker[], district judges may return to the sentencing regime that existed before 1987 and exercise unfettered discretion to select any sentence within the applicable statutory maximum and minimum.”).

8. Congress passed the SRA in an effort to reduce such disparities. See Mistretta v. United States, 488 U.S. 361, 363-364 (1989). The SRA created the United States Sentencing Commission (“USSC” or “Commission”) and authorized it to develop a system of mandatory sentencing guidelines which would minimize unwarranted sentencing disparities by establishing, consistent with statutory limits and legislative directives, the appropriate kind and severity of sentences for federal crimes. See United States v. Williams, 980 F.2d 1463, 1467 (D.C. Cir. 1992) (“The very purpose of the Guidelines . . . was to eliminate disparity in the sentences of similarly situated defendants.”). Every Supreme Court justice in the various opinions in Booker recognized that the Guidelines carry out the express will of Congress that sentences be uniform across the country to the extent possible and be based on the offender’s actual conduct and history. See, e.g., id. at 21 (majority opinion of Breyer, J.) (“Congress’ basic goal in passing the Sentencing Act was to move the sentencing system in the direction of increased uniformity.”); id. at 19 (“Congress’ basic statutory goal -- a system that diminishes sentencing disparity -- depends for its success upon judicial efforts to determine, and to base punishment upon, the real conduct that underlies the crime of conviction.”); id. at 42 (dissenting opinion of Stevens, J.) (“The elimination of sentencing disparity, which Congress determined was chiefly the result of a discretionary sentencing regime, was unquestionably Congress’ principal aim.”); id. at 47 (dissenting opinion of Scalia, J.) (“the primary

objective of the Act was to reduce sentencing disparity.”). Although Booker holds that uniformity cannot be achieved through mandatory Guidelines, nonetheless, because reducing unjustified disparities was the underlying purpose of federal sentencing reform, that goal should still weigh heavily in the determination of a reasonable sentence.

9. Fidelity to the Guidelines best accomplishes that goal, as well as the other general sentencing goals set forth by Congress in 18 U.S.C. § 3553(a), and, therefore the Guidelines are entitled to substantial deference. See United States v. Wilson, 350 F. Supp. 2d 910, 914 (D. Utah 2005) (“Wilson I”); accord United States v. Peach, 2005 WL 352636, 4 (D. N.D. 2005) (“district courts should give the Sentencing Guidelines ‘substantial weight’”); United States v. Wanning, 354 F. Supp. 2d 1056, 1062 (D. Neb. 2005) (“[T]he Guidelines must be given substantial weight even though they are now advisory [because] [t]o do otherwise is to thumb our judicial noses at Congress”). As Judge Cassell reasoned in Wilson I, the Guidelines deserve deference because they are the product of an expert commission that studied the sentencing process at great length in order to fashion recommended sentences that carry out Congress’ specific sentencing directives, and meet the general purposes of sentencing described by Congress in the SRA. The resulting Guidelines, Wilson I held, plainly reflect the public’s will as expressed by democratically elected representatives, because Congress has repeatedly approved of the Guidelines or, in certain instances, specifically adjusted them to comply with Congressional policy decisions. Judge Cassell further observed that guided sentencing appears to have had a positive impact in deterring criminal conduct throughout the country, and thus serves the purpose of deterrence as well as punishment and fairness. For all of those reasons, Judge Cassell determined that he will “give heavy weight to the Guidelines in determining an appropriate sentence,” and “only depart from those Guidelines in unusual cases for

clearly identified and persuasive reasons.” Id. at 925.²

10. Booker directs sentencing courts to fashion sentences that are consistent with the factors set forth in 18 U.S.C. § 3553(a), and that can best be done by adhering closely to the sentences derived from the Guidelines. It is the very purpose of the Guidelines to assist judges in meeting the sentencing goals of Section 3553(a).³ Some courts have suggested that the Guidelines should not carry special weight because they do not sufficiently reflect the factors set out in Section 3553(a). See, e.g., United States v. Ranum, 353 F. Supp. 2d 984 (E.D. Wisc. 2005). That view is misguided. As Judge Cassell noted, “It would be startling to discover that while Congress had created an expert agency, approved the agency’s members, directed the agency to promulgate Guidelines, allowed those Guidelines to go into effect, and adjusted those Guidelines over a period of fifteen years, that the resulting Guidelines did not well serve the underlying congressional purposes. The more likely conclusion is that the Guidelines reflect precisely what Congress believes is the punishment that will achieve its purposes in passing criminal statutes.” Wilson I, 350 F. Supp. 2d at 915; accord Wanning, 354 F. Supp. 2d at 1061.

² The Sentencing Commission also believes, for the same reasons, that the Guidelines should be given substantial weight. See Peach, 2005 WL 352636, at 3 (recounting February 2005 congressional testimony of the Honorable Ricardo H. Hinojosa, Chair of the United States Sentencing Commission).

³ Through the specific provisions covering offense and offender characteristics and the various grounds for departure, the Guidelines address all of the considerations relevant to sentencing, as articulated in 18 U.S.C. § 3553(a), such as “the nature and circumstances of the offense and the history and characteristics of the defendant;” “the need for the sentence imposed -- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;” and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”

11. Accordingly, a sentence within the Guidelines range is presumptively reasonable, and accommodates the Congressional purpose, affirmed by the Supreme Court, of obtaining fair sentences which are uniform to the extent possible. See Mares, 2005 WL 503715, at 6 (“it will be rare for a reviewing court to say that [a Guidelines sentence] is unreasonable”). In this case, no unusual individual circumstances exist which warrant an exception to the preference for a Guidelines sentence.

12. A Court would commit no error if it treats the Guidelines as advisory, only increasing or decreasing a sentence beyond that suggested by the Guidelines in light of facts established by the jury verdict or an admission by the defendant, so long as the sentence is within the prescribed statutory range and is otherwise reasonable. See United States v. Coles, 403 F.3d at 767.

13. In imposing sentence in this case, the Court carefully considered the factors set forth in 18 U.S.C. §3553(a), making specific findings with respect to the nature and circumstances of the offense and the history and characteristics of the defendant before concluding that “the interest of the criminal justice system and the interests of your rehabilitation and future are appropriately served by a sentence near, but not at, the very bottom of the guideline range.” Transcript at 29. The sentence already imposed therefore is presumptively reasonable.

14. Moreover, defendant in his memorandum raises no new factors for the Court to consider in determining whether it would have imposed a different sentence, materially more favorable to him, had it been fully aware of the post-Booker sentencing regime. Given the factors already considered by the Court, the government submits that the sentence previously imposed

continues to be entirely appropriate. Therefore, the government requests that the Court maintain the previously imposed sentence.

Respectfully submitted,

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