

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

02-CR-132-S-02

v.

JUSTIN G. KAMMERUD,

Defendant.

Presently pending before this Court in the above entitled matter is a limited remand from the United States Court of Appeals for the Seventh Circuit to determine whether it would (if required to resentence) reimpose defendant's original sentence had the sentencing guidelines been merely advisory. In U.S. v. Paladino, 401 F. 3d 471, 484 (7th Cir. 2005), the Court advised as follows:

Upon reaching its decision (with or without a hearing) whether to resentence, the District Court should either place on the record a decision not to resentence with an appropriate explanation," *United States v. Crosby, supra*, 397 F. 3d at 1920, or inform this Court of its desire to resentence the defendant.

The Court has considered the views of counsel, the advisory sentencing guidelines, the purposes of sentencing, the reasons for its original sentence and determines that it would impose the original sentence. As justification for its original sentence the Court considered the following facts:

Defendant was involved in a conspiracy to manufacture, distribute and possess with intent to distribute methamphetamine with his father for almost two years. Conservatively calculated the total of the methamphetamine precursor chemicals in this case is slightly less than 1,000 grams which converts to 9,050 to approximately 10,000 kilograms of marijuana equivalent.

Defendant's offense level of 34 was reduced to 31 for acceptance of responsibility. Based on this offense level and defendant's criminal history category, one, the advisory guideline imprisonment range is 108-135 months.

Although defendant devotes much of his memorandum to this Court's denial of the safety value (affirmed by the Court of Appeals) his cumulative comments do not suggest that reconsideration should be granted. As at sentencing, he has again failed to carry the burden of proving he was entitled to the benefit of the safety value for those reasons previously stated by this Court and affirmed by the Court of Appeals. The Court denied defendant's request for a safety valve reduction finding that he had withheld information and evidence concerning the offense of conviction. The Court sentenced defendant to 125 months in prison because of the numerous transactions and the amount of drugs involved was near the top of the guideline range.

The imposition of the original sentence considered those suggestions presented both then and now by counsel: the seriousness

of the offense, adequate deterrence to others from becoming involved in the manufacture of methamphetamine and protecting the public. Had the guidelines been advisory, this Court would have imposed the same reasonable sentence considering defendant's criminal conduct. It is sufficient to hold defendant accountable and to protect the community from further criminality on his part.

Pursuant to 18 U.S.C. §3553 the Court may consider the character and history of the defendant. At sentencing the Court considered plaintiff's age and the lack of parental guidance together. This was counterbalanced by the defendant's criminal awareness and his own determination to be a part of the conspiracy.

Considering all these factors, a sentence near the top of the advisory guidelines is reasonable and necessary for the statutory purposes of sentencing.

For the reasons stated this Court advises the United States Court of Appeals for the Seventh Circuit that it would reimpose defendant's original sentence had the sentencing guidelines been merely advisory.

Entered this 19th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge