

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARIC R. BOTHUN,

Defendant.

ORDER

03-CR-0083-C

The Court of Appeals for the Seventh Circuit has remanded this case to this court for the limited purpose of giving me the opportunity to advise the court of appeals whether I would impose the same sentence upon defendant now that the United States Sentencing Guidelines have been held to be advisory only. The answer is yes.

It is true that defendant's sentence is a long one. However, I am not persuaded that a lesser one would be considered reasonable. Defendant's relevant conduct involved various drugs adding up to 3,794.53 kilograms of marijuana equivalent, estimated very conservatively; he had numerous guns in his home and a Glock 27-.40 caliber semi-automatic handgun and loaded magazine in the drawer of his work bench in the storage facility he used for drug distribution; he tried to continue his drug activities through his wife

after he was incarcerated in the Dane County jail; he continued to engage in drug distribution even after knowing he was under investigation in Wisconsin; and he has a significant criminal history that includes bail jumping and forgery. His counsel argues that the court erred at the time of sentencing in not considering what portion of the methamphetamine with which he was charged should have been deducted because it was for defendant's personal use. Defendant never raised the personal use issue at sentencing; even if he had, it would have been a difficult proposition to prove, in light of the corroboration of various witnesses, the amounts of cash that defendant was observed to have (and his possession of a money counter, which he described to one witness as necessary because of the time it took to count all his money), and the quantities attributed to him, which far exceed a personal use amount. Given the conservative view taken of the amounts involved, defendant cannot argue with any real force that he was sentenced unfairly for the quantities he distributed.

Giving defendant a lower sentence would depreciate the seriousness and extensiveness of defendant's criminal conduct, would not provide the public the protection it deserves and

would fail to achieve parity with other similarly situated defendants.

Entered this 1st day of November, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge