

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

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

03-CR-153-S-01

v.

RAJIB MITRA,

Defendant.

Presently pending before the Court in the above entitled matter is a limited remand from the United States Court of Appeals for the Seventh Circuit to determine whether this Court would impose 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 and the reasons for its original sentence, determining that it would impose the same sentence.

As justification for its original sentence the Court considered the following facts:

Defendant was responsible for interrupting Madison police communications on 36 separate occasions since January 2003. Defendant used his knowledge and expertise of computers and radios to transmit radio signals that caused substantial damage to the City of Madison's emergency radio system in October and November 2003. Public health and safety were threatened because the signals interrupted communications for Madison's emergency systems. Defendant's conduct caused a substantial disruption of a critical infrastructure. Defendant on numerous occasions committed perjury by stating that the disruptions to the radio transmissions were malfunctions and not intentional. The transmissions were intentional, major and substantial damage to the radio network.

Defendant's offense level was enhanced to 24 by the Court's finding by a preponderance of the evidence that he had substantially disrupted a critical infrastructure. It was also enhanced two levels for obstruction of justice and two levels for Mitra's use of a special skill. Based on this offense level of 28 and Mitra's criminal history category of two, the advisory guideline imprisonment range is 87-108 months. The Court declined to depart upward from the guidelines and sentenced Mitra to 96 months in prison.

The imposition of the original sentence considered those suggestions presented both then and now by counsel: the seriousness of the offenses, adequate deterrence to criminal conduct,

protecting the public and the defendant's lack of remorse. Had the guidelines been advisory, this Court would have imposed the same sentence believing it to be reasonable considering the defendant's criminal conduct, 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. As his counsel argued at sentencing defendant is a young man who worked gainfully in the computer field and pursued his master's degree. This is counterbalanced by his continuing lack of remorse and refusal to accept responsibility for his criminal conduct.

Considering all these factors, a sentence in the middle 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 impose defendant's original sentence had the sentencing guidelines been merely advisory.

Entered this 18th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge