

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

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

03-CR-04-S-01

v.

TERRY MORTIER,

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:

On November 5, 2002 and November 26, 2002 defendant sold an informant a half ounce of methamphetamine. On a third occasion he sold the same informant an ounce of methamphetamine. On December 20, 2002 Washburn County officers executed a search warrant at defendant's residence. A large quantity of cocaine and methamphetamine were found at the residence together with \$15,720.00 in U.S. currency hidden inside the wall underneath a windowsill.

Defendant's relevant conduct involved the distribution of methamphetamine, cocaine and other drugs which convert to 2,916.85 kilograms of marijuana equivalent. Defendant was on probation for a felony drug offense until November 14, 2002 which was after he committed the first offense.

The Court determined defendant's offense level to be 31 and reduced it three levels for acceptance of responsibility to 29. Based on this offense level and defendant's criminal history category of three, the advisory guideline imprisonment range is 108-135 months. Because there is a statutory minimum of ten years imprisonment, the restricted guideline range is 120-135 months. The Court sentenced defendant to 135 months in prison.

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

of the offense, adequate deterrence to criminal conduct, and protecting the public. Had the guidelines been advisory, this Court would have imposed the same sentence believing it to be reasonable considering the defendant's criminal conduct, and 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 defendant's character and history. Defendant argues that the Court should consider that he used illegal drugs to control the pain of his cancer and became addicted. At sentencing the Court considered these factors and stated "The Court finds no justification for the use of methamphetamine." Any mitigating factors are counterbalanced by the need to hold defendant accountable for his criminal conduct which includes distributing large amounts of methamphetamine to others and to deter him from any further criminal conduct.

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

Entered this 3rd day of August, 2005.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge