

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

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

03-CR-06-S-01

v.

SHANNON HUGHES,

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. The Court grants the government's motion to file its position statement instante.

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 Shannon Hughes was the primary supplier of large quantities of cocaine base for various distributors. He is responsible for the distribution of approximately 3.6 kilograms of cocaine base in the La Crosse, Wisconsin area. The amount of cocaine base involved in defendant's relevant conduct was more than two times the amount necessary to reach the highest advisory guideline level for cocaine base. For sentencing purposes the applicable advisory guideline provides that anything over 1.5 kilograms of cocaine base attains the maximum base offense level.

Since defendant dropped out of high school and moved from his mother's home he has either been in prison or trafficking narcotics. The penal system has thus far provided little deterrence.

The Court determined defendant's offense level to be 38 and decreased it three levels to 35 for his acceptance of responsibility. It further reduced defendant's offense one level for substantial assistance, reducing the top level of the guideline by 38 months. The Court found that no further departure was necessary because his assistance was not extraordinary. The leader rolling over confederates who are less culpable than he does not of

itself become extraordinary and happens frequently in order to obtain a downward departure. Although defendant is considered a career offender this did not change his offense level. Based on this offense level of 34 and defendant's criminal history category of six, including at least two prior convictions for attempted first degree murder/aggravated battery and manufacture/delivery of a controlled substance, the advisory guideline imprisonment range after the § 5K1.1 departure is 262-327 months. The Court sentenced defendant at the top of the guidelines to 327 months. The guideline as determined by the Court was not disputed by counsel for either party although they recommended a sentence at the bottom of the guideline range which for the reasons set forth herein was considered and rejected by the Court.

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, 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 significant 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 had a troubled childhood. Since his arrest he has provided assistance and

cooperation to the government. These factors are counterbalanced by the need to hold the defendant accountable for his ongoing criminal conduct and to provide the community with a much needed reprieve. The Court continues to believe that defendant is very likely to commit other crimes. He has not been deterred in the past and a long prison term will serve as a deterrent to his continuing criminal behavior and incapacitate him for a period of time necessary to protect the lives and safety of other victims.

Considering all these factors, a sentence at the top of the advisory guidelines is reasonable, responsible, relevant and necessary for the statutory purposes of sentencing. The Court selected a sentence at the top of the guideline range because it was warranted and required, not only by the guidelines, the advisory guidelines, 18 U.S.C. § 3553 and the interests of justice in attempting to reach and obtain a more safe and orderly environment. It recognizes a downward departure which should be limited to provide a just and reasonable sentence. Its conscientious deliberations concluded that a sentence at the top of the guidelines as well as the advisory guidelines was justified, balancing the years defendant will serve until he is perhaps in his mid-50's against the damage and harm which will be eradicated based upon his incapacitation suggests this to be the only appropriate sentence.

USA v. Shannon Hughes, Case No. 03-CR-006-S-01

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 1st day of July, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge