

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

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

03-CR-06-S-02

v.

JOVAN ALEXANDER,

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 instanter.

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 is responsible for 142 grams of cocaine base. His relevant conduct included travels to Chicago with his co-defendant Shannon Hughes to obtain multiple ounce quantities of cocaine base to be brought back to LaCrosse, Wisconsin for subsequent distribution. The amount of cocaine base for which defendant is responsible is near the top of the drug quantity range used to determine the offense level.

When arrested defendant provided a false identity to investigators and continued the ruse to attempt to gain pretrial release. Defendant did not accept responsibility for the offense.

The Court determined defendant's offense level to be 32. The Court increased it two levels for obstruction of justice because he knowingly provided materially false information to a probation officer and the Court which was used by the Court to determine possible pretrial release options. Based on this offense level of 34 and defendant's criminal history category of six, the advisory guideline imprisonment range is 262-327 months. The Court sentenced defendant to 300 months.

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 criminal conduct, and sufficient to hold defendant accountable and to protect the community from further criminality on his part.

Defendant argues that the sentence is harsh. A balancing of the years defendant will serve until he is about 50 years old against the societal harm and damage he would cause during that time if he were not incapacitated suggests the sentence is reasonable, responsible and not more than is necessary.

Pursuant to 18 U.S.C. § 3553 the Court may consider the defendant's character and history. Defendant has not advised this Court of any character traits or history he now wishes to be considered. There is a high risk that defendant will re-offend as evidenced by his prior record. The Court's sentence meets the need for individual and general deterrence.

Considering all these factors, a sentence near the upper 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 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