

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

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

03-CR-85-S-01

v.

VIRGIL D. CARROLL,

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 on Count 4 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 arrested on June 20, 2003 at Fort McCoy, Wisconsin where he was undergoing annual Army Reserves Training. A search of his quarters revealed 35 grams of methamphetamine, related paraphernalia, more than 100 pills containing the methamphetamine precursor pseudoephedrine, and a .22 caliber derringer. Defendant's relevant conduct included 43.14 kilograms of marijuana equivalent and distributing methamphetamine to minors Cassandra Schnitzler and Sarah Shawley on June 8, 2003.

At his plea hearing defendant admitted intentionally possessing for distribution the methamphetamine found in his quarters on June 20, 2003 and possessing the derringer in furtherance of that drug trafficking crime. He subsequently moved to withdraw his guilty plea. At the sentencing hearing defendant testified that he had falsely admitted guilt at his plea hearing. The Court found that defendant falsely testified at the sentencing hearing which obstructed and impeded the administration of justice.

The Court determined defendant's offense level to be 20. The Court increased it two levels for obstruction of justice because he impeded the administration of justice at his sentencing hearing. The Court found that defendant did not qualify for a downward adjustment for acceptance of responsibility because he is no longer accepting responsibility for his criminal conduct.

Based on this offense level of 22 and defendant's criminal history category of one, the advisory guideline imprisonment range is 41-51 months. The Court sentenced defendant to 51 months on Count 4. A five year consecutive sentence was imposed on Count 5. The Court stated as follows: "The offense, however, is aggravated. He gave methamphetamine to two teenage girls. This may be grounds in some instances for an upward departure. The Court certainly believes it's grounds for upward departure under 5K2.0 here but its's not going to move upward, but it's going to sentence at the high end of the guideline range rather than to move upward as it could and as it should."

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.

Pursuant to 18 U.S.C. § 3553 the Court may consider the defendant's character and history. Defendant argues that the Court should consider his age, his status as head of family, his service in the military and his history of being a law-abiding citizen. These factors are counterbalanced by the need to hold

defendant accountable for his criminal conduct which includes distributing methamphetamine to two minor girls 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 6th day of July, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge