

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

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UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

03-CR-088-S-01

v.

PAUL J. DELATORRE,

Defendant.

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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 (7<sup>th</sup> 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 Delatorre participated in a conspiracy to distribute and to possess with intent to distribute 17,000 pills of MDMA (ecstasy) which is the equivalent of 2,332.5 kilograms of marijuana. Defendant arranged for at least three participants to travel to Amsterdam to pick up MDMA pills for him and arranged for MDMA pills to be shipped from Amsterdam to the United States for at least three other participants. The defendant also directed Dietz to locate a mailing address in Madison for the shipment of MDMA pills, directed him as to a selling price and advised him when and where he was to collect the money from the sale of the pills.

Immediately following his arrest defendant provided a statement to investigating officers. The Court denied defendant's request for a downward departure for extraordinary acceptance of responsibility based on this statement concluding that defendant's actions do not fall outside the heartland of similar drug cases.

Defendant posed a significant risk of recidivism as evidenced by his role in this offense, his criminal record and the fact that he was serving multiple probation terms when he committed the offense.

The Court determined defendant's offense level to be 32. It was increased two levels for his role as manager in this criminal activity and then reduced three levels for defendant's acceptance of responsibility. Based on this offense level of 31 and defendant's criminal history category of five, the advisory

guideline imprisonment range is 168-210 months. The Court sentenced defendant to 180 months near the lower end of the guideline range.

Defendant argues that his sentence should have been reduced because of his statement to the investigating officers at the time of his arrest. The Court considered and continues to consider the statement to investigating officers made by defendant immediately following his arrest. For this he not only received a downward departure for acceptance of responsibility but also a sentence closer to the low end of the guidelines rather than to the upper middle. The statement was balanced against the length of time defendant engaged in the distribution of drugs and the amount of drugs which fall near the middle of the applicable drug quantity range. The Court of Appeals held that this court's decision to deny this downward departure was an exercise of discretion and not reviewable. The Court of Appeals also affirmed this Court's calculation of the amount of drugs for which defendant was responsible.

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 has considered the defendant's character and history who apparently "grew up with everything a kid could want". Defendant argues that he should receive a shorter sentence because of the candid admissions he made to investigators. As aforesaid the Court considered this statement at sentencing. These admissions are counterbalanced by the length of time defendant conspired to distribute and possess with intent to distribute a considerable amount of MDMA together with his significant risk of recidivism.

Considering all these factors a sentence near the lower end of the advisory guidelines is reasonable, responsible 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 26<sup>th</sup> day of May, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge