

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-02

v.

FREDERICK J. DIETZ,

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 Dietz knew co-defendant Delatorre was conspiring to distribute MDMA (ecstasy) as far back as the spring of 2000 based on his arrest at JFK airport on May 15, 2000 when 5,132 pills of MDMA were confiscated. After defendant moved to Wisconsin he continued contact with Delatorre and agreed to jointly undertake the same course of conduct and scheme in which he had engaged while in New York. Defendant received 3000 pills of MDMA at his residence in April 2003. The Court determined that the drug amount for which defendant was responsible was 8,132 pills, the equivalent of 1,152 kilograms of marijuana.

Defendant did not have any criminal convictions and was cooperative throughout the investigation and prosecution of this case. He appeared motivated to address his mental health needs and participate in substance abuse treatment. These factors suggest a low probability of recidivism.

The Court determined defendant's offense level to be 32. It was reduced two levels based on the safety valve provision, three levels for acceptance of responsibility and two levels for substantial assistance. Based on this offense level of 25 and defendant's criminal history category of one, the advisory guideline imprisonment range is 57-71 months. The Court sentenced defendant to 60 months at the lower end of the guideline range.

Defendant's counsel requests an evidentiary hearing before the Court on the issue of whether the Court would impose the same

sentence. Defendant has failed to present anything not cumulative of his previous submissions. He continues to argue that the Court should not have considered relevant conduct because it was separate from the offense of conviction. Both this Court and the Court of Appeals have addressed this argument which stated "The closeness of the similarity to this activity in which these conspirators engaged trumps a temporal concern which defendant has brought to this Court's attention." The Court of Appeals affirmed the Court's finding of relevant conduct stating, "The relevant conduct is substantially connected by multiple common factors: all three transactions involved Dietz, Delatorre, and a common supplier in Amsterdam working together to smuggle ecstasy into the United States for distribution." No hearing is necessary.

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, protecting the public and defendant's low probability of recidivism. 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. As the Court stated at the

original sentencing defendant had no criminal history and was cooperative during the investigation and prosecution of this case. The Court also stated that defendant's probability of recidivism was low because he intended to address his mental health and substance abuse problems. This is counterbalanced by defendant's participation in a long-term conspiracy to smuggle ecstasy into the United States.

Considering all these factors, a sentence near the bottom 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 25<sup>th</sup> day of May, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge