

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-098-S-02

v.

RICHARD D. SIMMERS,

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 engaged in a conspiracy to manufacture methamphetamine for almost a year. His relevant conduct involved 105 grams of a mixture or substance containing methamphetamine. Defendant was a manager or supervisor of at least four other participants in this criminal activity that had five or more participants.

Defendant fled to avoid arrest on October 21, 2002. Defendant was traveling in dense fog and rain with his lights turned off, at speeds up to 65 miles per hour on a road with blind curves and through at least one intersection. He put the pursuing deputy and any other persons who might have been traveling on those rural roads at a substantial risk of death or serious bodily injury.

The Court determined defendant's offense level to be 26. It was increased three levels because of defendant's managerial role and two levels because of reckless endangerment. The United States Court of Appeals for the Seventh Circuit found that this Court did not err in applying this reckless endangerment adjustment.

This Court then reduced defendant's offense level three levels for his acceptance of responsibility. Based on this offense level of 28 and defendant's criminal history category of four, the advisory guideline imprisonment range is 110-137 months. The Court sentenced defendant to 120 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, protecting the public and providing the defendant with educational training, medical care and other correctional treatment. 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 is an addict and has a high level of intelligence. He argues that he has a young child who would greatly benefit from a male role model in his life. These factors are counterbalanced by the numerous illegal transactions that occurred during the length of the conspiracy, the defendant's past criminal conduct and his known danger to society.

Considering all these factors, a sentence near the middle 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 3rd day of June, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge