

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-106-S-01

v.

DARRELL G. HEDGES,

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 traveled from his home in Indiana and purchased 520 boxes of cold medicine from three different Woodman stores in one day. His conduct involved 695.32 grams of pseudoephedrine which is the equivalent of 6,950 kilograms of marijuana. At the time of his arrest defendant possessed a loaded .45 caliber semiautomatic pistol.

Although defendant had only one countable prior conviction he was on two years of conditional discharge and on bond in another prosecution when he committed this offense. Search warrants were executed at his residence in April of 2000 and December of 2001, yet he was undeterred from his involvement with methamphetamine. As a result of the second search warrant defendant's son was sentenced to four and one half years in prison for the manufacture thereof. In December 2002 defendant burned his own house and himself during the manufacture of methamphetamine. Defendant had a firearm in his vehicle during three arrests within the span of one year.

The Court determined defendant's offense level to be 34. It was increased two levels because the defendant possessed a loaded .45 caliber handgun which the Court found was probably connected with the offense. This total was decreased three levels for his acceptance of responsibility. Based on this offense level of 28 and defendant's criminal history category of two, the advisory guideline imprisonment range is 151-188 months. The Court

sentenced defendant to 188 months. The Court stated as follows, "Although an upward departure could be justified under Section 4A1.3 because the defendant's criminal history category does not adequately reflect the likelihood he will commit further crimes, a sentence to the top of the guideline range is sufficient to hold him accountable and to serve as a general deterrent."

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 who is 56 years old was honorably discharged from the United States Army after serving in Vietnam. He is addicted to methamphetamine. These factors are counterbalanced by the need to hold defendant accountable and to deter defendant from any further criminal conduct. Specifically, the Court finds that defendant's prior encounters with law enforcement have not deterred him from the manufacture of methamphetamine.

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 28<sup>th</sup> day of June, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge