

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TEK NGO,

Defendant.

MEMORANDUM

03-CR-0110-C

The parties have responded to the court's invitation to submit their views on whether the court should impose the same sentence on defendant Tek Ngo it imposed originally, when the Sentencing Guidelines were considered to be binding on federal district courts. Counsel for both parties have provided the court thoughtful arguments about the proper sentence for defendant.

Defendant was sentenced on June 23, 2004 to 210 months in prison for conspiracy to distribute methamphetamine and distribution of methamphetamine. His sentence was enhanced considerably on the finding that he was a career offender as the Sentencing Guidelines defined that term. The finding was made by the court; the jury did not make the predicate finding that defendant had two previous crimes that were violent felonies. The

finding was somewhat close because the two crimes in question had been committed only ten days apart and defendant had not been arrested between the two. I found, however, that he did not meet the criteria for related offenses because the two crimes did not occur on the same occasion; they were not part of a common scheme or plan; and they were not consolidated for trial or sentencing. Therefore, I considered the crimes as two separate crimes that provided the basis for the finding that defendant was a career offender. The consequence was that defendant's sentencing range was 210 to 240 months. Without the career offender finding, his offense level would have been 28 and his criminal history category IV, giving him a sentencing range of 110 to 137 months.

After giving this matter considerable thought, I am persuaded that defendant's sentence is reasonable and that I would have given him the same one under an advisory guidelines system. Although the career offender question was a close one under the guidelines, I cannot say that it was unreasonable to consider defendant a career offender. His previous conduct involved two counts of attempted aggravated robbery of a seafood shop and of a video store. In both instances, guns were displayed; at the video store, the store's owner and a clerk were directed to lie face down during the robbery. Although it appears that defendant was merely the driver in both instances, he had to know the purpose of the trips and the fact that his accomplices were armed. It is true that defendant was only 19 when he committed these crimes but he has not led a crime-free life in the years after he was

released from custody in connection with the aggravated robberies. Instead, he spent approximately five years before his arrest in this case selling large quantities of methamphetamine, along with cocaine and ecstasy. His drug distribution is serious criminal conduct, made more serious by his use of young women to transport the drugs. His employment record does not include any employment for the years 1993 until 1997, although he was released from custody in April 1993.

Even if defendant were not considered a career offender under the Sentencing Guidelines, his criminal record and five years of drug dealing are strong indicators that he is not motivated to change his criminal behavior. The return to criminal activity after serving almost three years in prison is evidence that defendant is not readily deterred by penalties. Therefore, I would not change his sentence. Doing so would not provide adequate protection for the community.

Entered this 16th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge