

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

UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

03-CR-078-S-01

v.

ROBERT A. MYKYTIUK,

Defendant.

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 (7th 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:

A search warrant was executed at defendant's Cumberland, Wisconsin residence in May 2003, after police were told that defendant was involved in manufacturing methamphetamine. Numerous listed chemicals, items of equipment and other ingredients commonly used to make methamphetamine were seized from the premises. Defendant returned home during execution of the search warrant and attempted to leave. When he was stopped by police, they found a loaded handgun in his truck. Defendant was originally charged in Barron County Circuit Court but was released on bail. About two weeks after the first arrest, he turned up at a Rice Lake Hospital with burns to his arms and hands. A search of the mobile home where the defendant was staying and where a late night fire occurred revealed evidence of another attempt to manufacture methamphetamine.

The advisory guideline imprisonment range for Count 1 is 87 to 108 months and Count 2 requires a five year consecutive sentence. 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.

Defendant argues that his character and positive history can also now be considered by the Court as mitigating factors. Defendant asserts these mitigating factors include: he was not manufacturing methamphetamine to make money; he is a drug addict; his past offenses were minor and he had a skull fracture in 1995. Considering all these factors, a sentence near the bottom of the guideline range for Count 1, when coupled with the mandatory five-year term in Count 2, is reasonable and necessary for the statutory purposes of sentencing.

For the above reasons this Court advises the United States Court of Appeals for the Seventh Circuit that it will not resentence defendant Robert A. Mykytiuk.

Entered this 19th day of April, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge