

121-0891

DUDLEY AND SMITH

A PROFESSIONAL ASSOCIATION

JOSEPH J. DUDLEY, JR.
DAVID W. LARSON
MARK LABINE
JOAN H. LUCAS*
PHILIP C. WARNER
STEVEN C. OPHEIM
NANCY DUDLEY KELLY
MICHAEL D. O'NEILL

ATTORNEYS AND COUNSELORS AT LAW
SUITE 2602
AMERICAN NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
TELEPHONE 612 - 291 - 1717
TELECOPIER 612 - 223 - 5055

RETIRED
JOSEPH J. DUDLEY
G. WILLIAM SMITH
OF COUNSEL
R. E. LOW

*ALSO ADMITTED IN ARIZONA

SHOREVIEW OFFICE
SUITE 178 - ARDEN PLAZA
3585 NORTH LEXINGTON AVENUE
ARDEN HILLS, MINNESOTA 55126

August 30, 1990

Guidelines Comment
United States Sentencing Commission
1331 Pennsylvania Avenue N.W.
Suite 1400
Washington, D.C. 20004

Dear Commission Members:

My name is Michael D. O'Neill and I am an attorney writing to you on behalf of my client Terry Wayne Quarles. Mr. Quarles is a 21 year old who was tried together in Federal District Court in the State of Minnesota with 19 year old, Lamont Brown. Neither defendant had a prior record. The charges against both defendants were 1) aiding and abetting the other to possess with the intent to distribute in excess of 50 grams of cocaine base (21 U.S.C. 841(a)(1); 21 U.S.C. 841(b)(1)(a); 18 U.S.C. Section 2) and 2) conspiracy to possess with the intent to distribute in excess of 50 grams of cocaine base (21 U.S.C. 841(a)(1); 21 U.S.C. 841(b)(1)(a); 21 U.S.C. 846).

At trial, the facts showed that on June 6, 1990, Mr. Brown had in his undershorts, 212 grams of cocaine base. On this day, Mr. Quarles was with Mr. Brown as they were both together at a St. Paul hotel parking lot. Mr. Brown was found guilty at trial of possession and conspiracy to possess in excess of 50 grams of cocaine base. Mr. Quarles was found not guilty of aiding and abetting Mr. Brown in possession of the cocaine base. In spite of Mr. Quarles contention at trial that he did not know Mr. Brown was in possession of the cocaine base and that he was at the hotel

Commissioner Members
August 28, 1990
Page Two

to obtain a room for he and a girlfriend, Mr. Quarles was found guilty of conspiracy to possess in excess of 50 grams of cocaine base.

At trial, an expert for the United States testified that the cocaine base found on Mr. Brown was about 40 percent pure cocaine with the rest of the grams being an additive. Also, a second expert for the United States testified that the street value of the cocaine base was around \$10,000.00.

As it stands now, both Mr. Brown and Mr. Quarles fall on level 34 of the sentencing guidelines, because the 212 grams found are used against both Mr. Brown and Mr. Quarles.

It is my belief that the guidelines use of this particular 212 grams (with only a 40 percent purity level, and only a \$10,000.00 street value) overstates the severity level for Mr. Quarles:

1. The assumption that this 212 grams of cocaine base is 100 times greater than ordinary cocaine is not borne out by the facts.

(a) The expert testimony at trial regarding this particular cocaine base showed this cocaine base to have a purity level of around 40 percent, or approximately 84 grams of cocaine in it. Because of this low purity level, and the fact that not all cocaine base is 100 times greater than regular cocaine, the expert testified the street value for this particular 212 grams of cocaine base was only approximately \$10,000.00.

2. Unless an agreement between two co-conspirators is borne out by the facts, and no such agreement was borne out in our case, the guidelines should take the grams found and divide them by the number of co-conspirators found guilty. Such a formula allows each co-conspirator to be responsible for their percentage involvement in the illegal activity.

If the sentencing guidelines were to allow (1) the purity level to be considered or (2) the percentage involvement in the co-conspiracy to be considered; or (3) both, Mr. Quarles would receive a sentence that the sentencing commission should consider more fair.

Commissioner Members
August 28, 1990
Page Three

Example of a more fair sentence:

1. (Using purity level) 84 grams of cocaine equals level 16... lowest level.
2. (Using purity level and dividing by the number of co-conspirators) 84 divided by 2 equals 42 equals level 14...lowest level.
3. (Increasing level because cocaine is combined to make cocaine base) 42 grams multiplied by 100 equals 42 grams of cocaine base equals level 30... highest level.

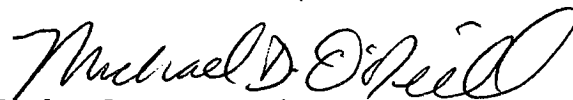
In this example, Mr. Quarles would be equated with a level somewhere between level 14 and level 30. To determine where Mr. Quarles should fall, the facts introduced at trial regarding the purity level and the street value of the cocaine base could determine how much above level 14 that Mr. Quarles should be placed.

I would appreciate any type of response or any suggestions that the commission may have, as my client faces up to 15 years in prison the way the guidelines read at this time. Before the commission sanctions such a severe penalty for a 21 year old first time offender, the commission members should know how the guidelines work in this case.

Thank you for your time and anticipated consideration.

Sincerely,

DUDLEY AND SMITH, P.A.


Michael D. O'Neill

MDO:mel