

PCRI-42/91

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF PENNSYLVANIA

P. O. BOX 11877

FEDERAL BUILDING

HARRISBURG, PA. 17108-1877

WILLIAM W. CALDWELL

JUDGE

September 26, 1990

Honorable William W. Wilkins, Jr.
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W., Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

I am responding to your letter of September 7, 1990, soliciting comments on guideline sentencing. I am no fan of this process but thus far the main problems I've encountered fall in two or three areas.

The first is acceptance of responsibility. Many times a defendant pleads guilty but does not cooperate with or render assistance to the prosecutor, or provide a statement of accountability in connection with the pre-sentence report, etc. The guidelines in 3E1.1.(c) provide that a guilty plea does not earn the credit "as a matter of right." Numerous appellate decisions are casting doubt on the validity of this provision in light of the Fifth Amendment, etc. This area needs to be made more specific and defined more clearly, so that appeals and hearings can be avoided in connection with determining acceptance.

Second, the guideline sentences in drug cases should be reviewed. In many instances the penalties in this field seem unnecessarily harsh, and out of proportion to penalties for other offenses. This may be the result of overkill in our efforts to wage "war" on drugs. In my experience, unsophisticated conspirators, such as street dealers or distributors, sometimes as young as 19 or 20 years of age, are being sentenced to terms of 20 or 30 years. The usefulness of such sentencing has to be questioned.

Finally, the need in certain cases for a downward departure sometimes presents a problem. In some cases there may not be "a mitigating circumstance of a kind, or to a degree not adequately taken into consideration", but the sentence

Hon. William W. Wilkins, Jr.

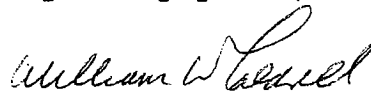
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called for by the guideline seems excessive or unnecessary in the total circumstances. While the goals of disparity or consistency are recognized, consideration should be given to this area. Although difficult to define, there are those cases where application of the guidelines do not accomplish justice.

I appreciate the opportunity to submit these comments.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William W. Caldwell".

William W. Caldwell