

United States District Court

Middle District of Florida

Post Office Box 53135

Jacksonville, Florida 32201

FCRI-59/91

Susan H. Black
Chief Judge

October 1, 1990

Mr. Paul Martin
Communications Director
United States Sentencing Commission
1331 Pennsylvania Avenue, NW, Ste. 1400
Washington, DC 20004

Dear Mr. Martin:

In response to Mr. Wilkins' recent letter, except for the attached and my views concerning the guideline range for armed robbery being too low, which views have been expressed to the Commission members, I have no other recommendations.

I appreciate your inquiry as to my recommendations. Please let me know if I can be of any further assistance.

Sincerely,


SUSAN H. BLACK

SHB/shs

United States District Court

Middle District of Florida

Post Office Box 53135

Jacksonville, Florida 32201

Susan H. Black

United States District Judge

January 10, 1990

United States Sentencing Commission
1331 Pennsylvania Avenue NW Suite 1400
Washington, D.C. 20004

Re: Randy Ivan Brown
Case #89-73-Cr-J-14

Dear Commission Members:

I have sentenced numerous defendants under the guidelines, but this is the first time I have felt a need to write to the Sentencing Commission.

On November 21, 1989, I sentenced Randy Ivan Brown to seventy-one months incarceration after he had been found guilty by a jury of the use of an interstate commerce facility while attempting to commit a murder for hire, in violation of Florida Statutes, Section 782.04, and 18 U.S.C. 1958. The offense involved the defendant's recruiting of another individual to murder his ex-wife. The scheme was foiled when the accomplice notified the authorities and assisted in the defendant's arrest and conviction. The accomplice stated that he never intended to murder the ex-wife, but initially went along with the plan in an attempt to obtain money from the defendant.

Based on Section 2E1.4 of the guidelines, the base offense level was determined to be twenty-three. I added a two-level adjustment pursuant to 3B1.1(c), as the defendant was considered to be the organizer of the murder for hire scheme. I made this adjustment despite the defense's objection that the defendant's accomplice was not criminally responsible for the commission of the offense, and, therefore, not a "participant" as described as application note one of 3B1.1. I am of the opinion that Section 3B1.1 of the guidelines does not adequately take into consideration cases of this nature where a co-offender is an undercover officer or an informant. According to the strict application of Section 3B1.1 and the definition provided for "participant," a role adjustment might not be warranted.

United States Sentencing Commission
1331 Pennsylvania Avenue NW, Suite 1400
Washington, D.C. 20004
Page Two
January 10, 1990

In computing the applicable guidelines in this case, I found that the aggravating role adjustment was appropriate even though the accomplice was not "criminally responsible for the commission of the offense." Furthermore, I believe that the United States Sentencing Commission, in the formulation of the guidelines, needs to consider the grave and serious nature of this type of offense described in 2E1.4 of the guidelines, and the base offense level of twenty-three might be insufficient.

Sincerely,



SUSAN H. BLACK