

United States District Court
District of Nevada

Chambers of
Philip M. Pro
United States District Judge

United States Courthouse
300 Las Vegas Boulevard South, Room 341
Las Vegas, Nevada 89101

October 15, 1990

United States Sentencing Commission
Attn: Communications Director
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Re: Judge Wilkins' Letter of September 27, 1990

Dear Sentencing Commission:

In response to Judge Wilkins' letter of September 27, 1990, I would offer the following comments.

1. Although I have not conducted a statistical survey, I believe the guideline sentences imposed by the Judges in the District of Nevada are consistent with the latest nationwide figures cited in Judge Wilkins' letter. However, my experience suggests that there has been an increase in the number of defendants who choose to proceed to trial rather than plead guilty under the sentencing guidelines. This experience is particularly apparent with regard to drug cases. However, I do not know whether to attribute this phenomenon to the impact of the sentencing guidelines or the impact of the mandatory minimum sentences recently legislated by Congress.

2. I suggest one change, or clarification, of guideline section 5K2.

Recently, I encountered a case, United States v. Betty Jean Keene, CR-S-88-229-PMP, in which a defendant was before me for sentencing for the crime of Use of an Unauthorized Access Device in violation of Title 18, United States Code, Section 1029(a)(2). In this particular case, the defendant, a travel agent, had made illegal charges to the credit cards of various of her customers to keep her business afloat. The victim was a Nevada bank to which the defendant made complete restitution prior to the commencement of any criminal investigation by the United States Secret Service. The guideline range in the defendant's case provided for a sentence of from 10 to 16 months even though the 50-year-old defendant had no prior criminal record and was otherwise stable in the community both with regard to her family and business life.

The defendant's attorney persuasively argued that unlike the situation wherein a defendant makes restitution after the commencement of a criminal investigation, or otherwise agrees to do so as part of a sentence following conviction, the guidelines

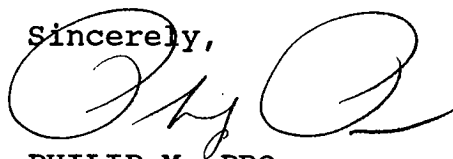
should treat a defendant more leniently where that person has made full restitution before any form of criminal investigation has even commenced. Indeed, as the defendant's attorney argued, many cases similar to that of Defendant Keene are simply resolved civilly between the parties and never result in any form of criminal investigation or prosecution. While not minimizing the seriousness of the defendant's conduct, I agreed that a departure was warranted. However, the Chapter 5 provisions of the sentencing guidelines were silent in this area except for the general provisions of Guideline 5K2, upon which I relied.

I would therefore suggest that section 5K2 be amended to include a policy statement which specifically addresses the situation in which a defendant has made restitution to a victim prior to the commencement of any criminal investigation.

3. I concur with the Commission's unanimous decision to encourage Congress not to enact additional mandatory minimum sentences. I am persuaded that current mandatory minimum sentences result in far too many 2 and 3-day trials which are little more than "slow pleas of guilty" by defendants who have nothing to lose by running the risk of trial.

I look forward to reviewing the policy statements pertaining to revocation of probation and supervised release in the near future. I hope the Commission will keep the guidelines, when finally promulgated, as flexible as possible so as to preserve the full range of discretion on the part of the sentencing judge in dealing with such revocation matters.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Philip M. Pro', written in a cursive style.

PHILIP M. PRO
United States District Judge