

PCRI-61191

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CHAMBERS OF
JUDGE GERALD W. HEANEY
FEDERAL BUILDING
DULUTH, MINNESOTA 55802

September 25, 1990

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

Gentlemen:

Pursuant to Judge Wilkins' request, I submit four suggestions for improvement of the Guidelines.

1. I believe that the Guidelines should be amended to make clear that a district court may depart downward without a motion by the government when it finds that a defendant has given substantial assistance to authorities in their law enforcement efforts. I am aware that some courts have followed the policy statement of section 5K1.1 and will not give credit for substantial assistance unless a motion is made. I believe that this policy is difficult to defend, particularly because the Department of Justice has not articulated the standards it will use in determining whether substantial assistance has been given.

At the very least, a thorough review should be undertaken by the Sentencing Commission to determine the circumstances under which prosecutors recommend a departure for substantial assistance and those in which they refuse to make such recommendations. My own experience is that motions for departures are made only when a defendant agrees to participate actively in future illegal transactions. Rarely, if ever, is a motion made to reduce the sentence of the defendant who has cooperated by fully revealing all of the information he knows about past illegal activities.

2. It appears that district court policies with respect to granting a two-level reduction for acceptance of responsibility vary greatly as between districts.¹ I believe that the Commission

¹In the Eighth Circuit, for example, some district courts appear to grant the reduction for acceptance of responsibility to nearly every defendant who pleads guilty, while other courts clearly require more than a guilty plea for the reduction. In the Western District of Missouri, 94% of defendants pleading guilty in 1989 received the two-level reduction, while only 70% of defendants

should make it clear that ordinarily, defendants should be given a two-level reduction for acceptance of responsibility if they plead guilty, and the reduction should only be denied in those cases where, notwithstanding the guilty plea, a defendant has continued to refuse to acknowledge the wrongfulness of his actions.

3. The Guidelines should encourage district courts to inform defendants fully at the time a guilty plea is taken of the probable consequences of a plea under the Guidelines. At the present time, the practice is to inform a defendant only of the Guideline range for the offense charged. In most cases, this information is meaningless, because it does not reflect additional relevant conduct that may be used to increase the sentence. It is true that defense counsel will ordinarily discuss with a defendant the sentence he can expect to receive under the Guidelines, but in many cases appointed counsel is not knowledgeable about the Guidelines and in others, the advice given is not a part of the record. Obviously, there are some cases where the information needed to compute the probable Guideline sentence is not available at the time of the guilty plea hearing. In my experience, that is the exception rather than the rule.

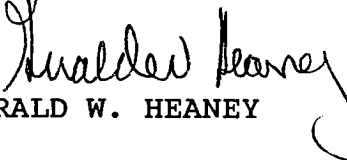
4. The Sentencing Commission should exercise the power granted to it by 28 U.S.C. § 995(a)(19) and study the feasibility of developing guidelines for the disposition of juvenile delinquents. Under the present system, juvenile delinquents are sentenced under 18 U.S.C. § 5037, which gives courts little guidance regarding the appropriate length of juvenile sentences. Our court has recently held that although the Guidelines do not themselves apply to juveniles, the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" in 18 U.S.C. § 5037(c)(1)(B) means the maximum sentence a juvenile could have received under the Guidelines but for his age. United States v. R.L.C., No. 90-5048 (8th Cir. Sept. 12, 1990). The Ninth Circuit has interpreted the same statutory language to mean the statutory maximum sentence prescribed for the offense in question. United States v. Marco L., 868 F.2d 1121 (9th Cir.), cert. denied, 110 S. Ct. 369 (1989). The formulation of dispositional guidelines for juvenile delinquents would obviate such conflicts. Until the creation of such guidelines, however, the Sentencing Guidelines should be amended to state explicitly that they do not apply to juveniles.

pleading guilty in the Eastern District of Missouri in 1989 received the reduction.

September 26, 1990
United States Sentencing Commission
Page 3

I would be pleased to discuss any of these suggestions with
personnel of the Sentencing Commission.

Sincerely,


GERALD W. HEANEY

GWH:bn