

United States District Court  
District of Kansas  
401 North Market  
Wichita, Kansas 67202

Chambers of  
Sam A. Crow, Judge

October 11, 1990

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

Attention: Communications Director

Dear Communications Director:

September 24th I received a letter from William W. Wilkins, Jr., Chairman of the United States Sentencing Commission, asking for our comments as to the "top three guideline sections or policy statements you believe need review, amendment or clarification..."

Enclosed is a copy of a memorandum which has been provided to me by Arlo D. Lindsey, Supervising Probation Officer, here in Kansas.

I hope this will be of some benefit to you.

Yours very truly,

  
Sam A. Crow  
U.S. District Judge

SAC:bjr

Enclosure

cc: Arlo D. Lindsey

## memorandum

RECEIVED  
OCT 9 1990U. S. District Judge  
Sam A. Crow

DATE: October 9, 1990

REPLY TO: Arlo D. Lindsey, Supervising  
ATTN OF: U.S. Probation Officer

SUBJECT: SENTENCING GUIDELINE

TO: The Honorable Sam A. Crow  
U.S. District Court Judge

Reference is made to your inquiry regarding William Wilkens September 7, 1990 letter concerning the sentencing guidelines. I offer the following thoughts/concerns:

With regard to Acceptance of Responsibility 3E1.1. As you know, many courts are allowing the two level reduction for acceptance of responsibility simply by virtue of the defendant's plea of guilty. The guideline clearly states that the defendant must demonstrate a recognition and affirmative acceptance of personal responsibility for his criminal conduct to receive the two level reduction. We often interview defendants who do not clearly meet the criteria set out in the commentary which would include a) voluntary termination or withdrawal from criminal conduct or association; b) voluntary payment of restitution prior to adjudication of guilty; c) voluntary and truthful admission to authorities of involvement in the offense and related conduct; d) voluntary surrender to authorities promptly after commission of the offense; e) voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense; f) voluntary resignation from the office or position held during the commission of the offense; and g) the timeliness of the defendant's conduct in manifesting the acceptance of responsibility. To the contrary, we often find that the defendant does not clearly accept responsibility stating that he was forced into criminal conduct, blaming others for his involvement, being entrapped by agents, etc., etc. It is suggested that this guideline might be divided into two areas whereby a one level reduction could be applied for a guilty plea and an additional level, or levels might be applied for those defendants who do take one or more of the affirmative steps listed in the commentary or for other affirmative actions such as voluntary participation in a drug treatment program, etc. As it currently stands those persons who make an affirmative acceptance and take those steps noted above to demonstrate their acceptance receive the same two level reduction for acceptance as does the one who enters a plea of guilty but does nothing more than that and even, during the presentence investigation, tends to shift blame to others and really not demonstrate a sincere contrition or acceptance of responsibility. In other words, an active participant in those affirmative steps might receive a greater deduction than a person who simply enters a plea of guilty.

The Honorable Sam A. Crow  
October 9, 1990  
Page 2  
Re: SENTENCING GUIDELINE

Another concern I have is with the Criminal History Category with regard to juvenile adjudications. As you know, points are added for each prior sentence of imprisonment and for each prior sentence, including juvenile sentences. Nationally there is wide diversity in the availability of juvenile records. In many other states juvenile adjudications and records are destroyed or are not disclosed. From a national perspective then there is a punishment disparity between those courts who can obtain juvenile records and those who cannot obtain them, by virtue of the application of criminal history points for juvenile adjudications. Kansas, for example, does have a good juvenile system for the most part and records are generally readily obtainable. Many other states, however, either destroy their records or by state law refuse to divulge them. Therefore there is the possibility that those defendants who commit juvenile offenses in states where records are not released would receive a less harsh sentence than a defendant might who committed an offense where the records are made available. This of course would allow some disparity to continue. Unfortunately, I have no solution to offer.

Lastly, I would express my concern regarding the U.S. Attorney's Offices' role in a sentencing process. In some cases the courts are accepting every aspect of the plea agreement, in effect, allowing the U.S. Attorney and the defense attorney to set the sentence. I recognize the necessity of plea bargaining but there have been occasions when the plea bargain contains elements that are directly opposed to the guidelines. For example when the U.S. Attorney agrees not to consider additional counts of drug distribution in setting the offense level, agreeing that weapons found in the defendant's home were clearly not a part of the offense, etc. Again, I bring these concerns to your attention but cannot offer a solution.

ADL/cs