

TKL-112/91

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December 27, 1990

Guidelines Comment
U. S. Sentencing Commission
1331 Pennsylvania Avenue
N.W. Suite 1400
Washington, D.C. 20004

ATTN: Communications Director

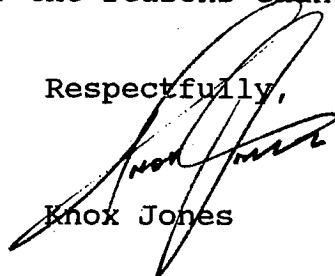
Re: Sentencing Guidelines: Section 4-A-1.2(f)

Dear Sir:

Enclosed is a copy of a particular objection to the guidelines relating to differentiating between "deferred adjudications" and "pre-trial diversions."

I would hope the Commission would consider amending the Guidelines to provide that any sort of deferred adjudication is not counted as a conviction, for the reasons enunciated in the enclosed motion.

Respectfully,



Knox Jones

KJ:sr

encls.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA

*

VS.

* CR. NO. 89-30044-06

ROLAND RAMOS

*

OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT

TO THE HONORABLE WILLIAM D. STIEHL, UNITED STATES DISTRICT JUDGE:

Now Comes ROLAND RAMOS, by and through his undersigned counsel of record, filing this, his Objections To Presentence Investigation Report, and respectfully showing the Court as follows:

I.

Paragraph No. 24 of the Presentence Report increases Defendant Ramos' criminal history category by one point. The Court's probation officer, Mr. Laub, interprets Section 4A-1.2(f) of the Sentencing Guidelines, to require such a one-point increment. Counsel must acknowledge with candor that Mr. Taub's interpretation may be technically correct. Even so, the result is ostensibly unfair and unjust. The language in this section is somewhat ambivalent. It first states:

"Diversion from the judicial process without a finding of guilt (e.g. "deferred prosecution" is not counted" (Emphasis supplied). Mr. Ramos was not "found guilty" (42.12(5) Texas Code Crim. Procedure)

The applicable section then goes on the state:

"A diversionary disposition resulting from a finding or admission of guilt, or a plea of nolo contendere, in a judicial proceeding is counted as a sentence under 4A-1.1(c), even if a conviction is not formally entered, except that diversion from juvenile court is not counted."

II.

Enclosed for the Court's perusal is a copy of Section 42.12(5) of the Texas Code of Criminal Procedure. The Court will see that the only way to get a deferred adjudication in Texas (State Court) is via 42.12(5) which requires a judicial disposition, per se. Had Mr. Ramos received a "deferred adjudication" i.e. a "pre-trial diversion" for the same offense in Federal Court, there would have been no "judicial disposition". Mr. Ramos would have simply been placed on informal probation-- and for a period of one year or less, as the Court knows.

III.

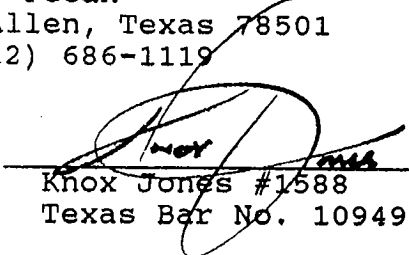
The bottom line is that Mr. Ramos will face up to another year and a half in jail because he received a "deferred adjudication" in state court rather than a "pre-trial diversion" in Federal Court. Because of this one point increment, his criminal history category is three, rather than two. (Paragraph 26). On its face, this appears to be a denial of equal protection which this Court has plenary power to correct.

Wherefore, Premises Considered, Defendant respectfully

requests that the Court disallow the one point increment referred to in paragraph 24 of the Presentence Report, establish Defendant's criminal history category at II rather than III, and assess Defendant's sentence within the applicable guideline range between 151 and 188 months.

Respectfully submitted,

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