

United States District Court

NORTHERN DISTRICT OF TEXAS
U. S. COURTHOUSE
FORT WORTH, TEXAS 76102

CHAMBERS OF
ELDON B. MAHON
U. S. DISTRICT JUDGE

March 20, 2001

Mr. Timothy B. McGrath, Staff Director
Office of Public Affairs
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-5000, South Lobby
Washington, D.C. 20002-8002

Re: Proposed Amendment of USSG § 2L1.2

Dear Mr. McGrath:

Thank you for soliciting my comments regarding the proposed amendment of USSG § 2L1.2. Based on the number of these cases I see on a regular basis, I am not surprised to learn that the Northern District of Texas has more defendants sentenced under § 2L1.2 than most other federal courts. Having reviewed the proposed amendment, I offer the following comments.

I applaud the proposal of an amendment of § 2L1.2; it is long overdue. As you correctly point out, the current § 2L1.2 does not distinguish among the types of aggravated felonies, resulting in a 16-level sentencing enhancement regardless of the circumstances of the offense. As a result, the offense levels under this section are often grossly disproportionate to the seriousness of a defendant's prior felony conviction.

Although the proposed amendment of § 2L1.2 does much to alleviate the problem of overstating a defendant's prior aggravated felonies, it does not go far enough because it does not give trial judges any discretion. For more than a half-century I have had an opportunity to serve as a state prosecutor, state district judge, United States Attorney, and for the past 29 years a federal district judge. My experience has taught me that each case is unique, and we should trust our judges to exercise some discretion in sentencing matters because they are in a position to best understand and consider the facts and circumstances of each case.

The problem I have with the proposed amendment to § 2L1.2 is that it does not allow trial judges to consider the unique extreme or mitigating circumstances that are present in each criminal case. The proposed amendment neatly divides sentencing enhancement levels based on a defendant's prior period of imprisonment; however, considering the imprisonment time alone fails to take into account whether a defendant was sentenced in state or federal court. For example, a "felon in possession of a firearm" charge in federal court frequently carries a sentence

of more than five years, whereas a defendant prosecuted for the same crime in Texas state court might receive a probated sentence. In addition, by relying solely on number of years of imprisonment, the proposed amendment does not allow the trial judge to consider the type of crime committed by the defendant. Furthermore, the proposed amendment is also flawed because it sets a mandated enhancement level based on the number of years of imprisonment and does not provide trial judges with a range of enhancement levels.

To properly give the trial judge discretion to consider all the facts involved in each individual case, I would propose further amending § 2L1.2 to provide the trial judge with a range of at least 4 enhancement levels that can be applied. For example, rather than impose a mandated 10 level enhancement for defendants who have served a certain number of years, allow the trial judge the discretion to apply an 8-12 level enhancement range. This would allow the trial judge to consider the distinctive circumstances underlying each defendant's previous imprisonment.

Again, I thank you for the opportunity to comment on the proposed amendment to § 2L1.2, and I hope my observations will be helpful. Please feel free to contact me if you have any additional questions, comments, or concerns in which you feel I may have a personal insight.

Sincerely,

A handwritten signature in black ink, reading "Eldon B. Mahon". The signature is fluid and cursive, with the first name "Eldon" and last name "Mahon" clearly distinguishable.

Eldon B. Mahon
Senior United States District Judge
for the Northern District of Texas,
Fort Worth Division

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EBM:jw