

February 01, 2003

Re: U.S. Sentencing Commission
Proposal for Amending the
U.S. Sentencing Guidelines

Issues Addressed

- * 21 USC 851
- * Criminal History Points

Sentencing Commission,

The issues to be addressed is of great importance and must be addressed soon. If these issues are continued to be over looked the Federal Bureau Of Prison System will continue to become over crowded with non-violent offenders; yes convicted felons although contrary to belief given a chance these people can become productive citizens while lifting the burden of housing these inmates off the tax payers budget in many many ways.

§851

Under the current law §851 as with many Federal Laws the United States Attorney has the discretion on which statute or code is applied and why it is applied in certain cases. Under §851 the defendant is subjected to increase punishment by reason of prior conviction (only one being required) the court shall proceed to impose sentence upon him as provided by this statute; 21 USC 851(d)(1). This section reads as though the judge has some if any discretion when in fact the hands of the judge are tied as with many of the Federal Statutes now in effect. The issue of the §851 should be considered for amendment to add a more stringent check system. The statute has no mitigating factors i.e. murder, guns, or victims ect.. The U.S. Attorney

has no checks and balance system when applying the §851 to enhance a sentence, which in many cases are more than excessive to begin with. In 96% of the cases the §851 is applied their involves a minimum mandatory set by the sentencing guidelines that the Judge must apply (again hands are tied). The §851 enhancement is used without any mitigating factors to turn the minimum mandatory sentence of TEN years into 20 yrs. and the minimum mandatory of TWENTY years into a MANDATORY LIFE sentence with on chance of parole. These are the affects of the §851 this is done all without any mitigating factors, no checks and balances for the U.S. Attorney while the hands of the judge are tied.

In 99% of cases the §851 is applied the U.S. Attorney offered a plea deal; 100% of the cases the deal was for sentences of 50% below the minimum mandatory. Because the defendant choice was to exercise his/her right to a trial in hopes of proving their innocents the 851 was applied for an enhanced sentence upon conviction. In 100% of these cases the §851 was applied only days most times less than 24 hours before the jury was to be selected, so this issue boarders the line of prosecutorial vindictiveness; take the plea or get excessive time innocent or not!

The bottom line here is the use of the §851. This statute serves the purpose of enhancing already excessive sentencing, causing double punishment for past state charges that may or maynot have been found to be convictions in the state courts, is used along with other enhancing statutes (criminal history points), and is a tool for prosecutors to punish people for exercising their rights by using the Justice System. This Statute is flawed as are many.

The Judge has no dicretion on the application of the §851 or the Minimum Mandatory sentences to be applied by the U.S. Attorney. In two out of 4 cases the Felony used to enhance the sentence

adjudication was withheld; no guilt was established. So contrary to the U.S.S.G. the U.S. attorney say's it's legal to apply the §851 to non-convictions in the eyes of State Court (an issue for the appeals court).

* Criminal History

Under §4A1.2 Definitions and Instructions for Computing Criminal History

(a) Prior Sentence Defined

- (1) The term "prior sentence" means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense. U.S.S.G. 2002 p.315

Under this text according to the U.S.S.G. prior sentence is stated to be a conviction "imposed upon adjudication of guilt" by any rout. Even as the sentencing guidlines states this in plain english it is being used as though any sentence is used without established guilt.

While under §4A1.2(c) Sentences Counted and Excluded

Sentences for all felony offenses are counted. Sentences for misdemeanor and petty offenses are counted, except as follows:

- (1) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are counted only if (A) the sentence was a term of probation of at least one year or a term of imprisonment of at least thirty days, or (b) the prior was similar to an instant offense: See U.S.S.G. 2002 p. 316

4A1.2(c) context is stating that sentencing must have been a term of at least one year or 30 days imprisonment. I am finding that under §4A1.1(c) points are being added for misdemeanors where no guilt was established nor was the requierments met to warrent points under this section. In 100% of the case researched the Probation officer in preparing the PSR added points for misdemeanor cases that did not met thecritirrior under any section of the U.S.S.G.. Due to the mis-interpetation of the U.S.S.G. points are being added and more time is being added and more defendants are spending more time being housed on the tax payers dollar.

Prison alternatives would save tax payer millions of dollars. While States such as Kentucky, Michigan, Connecticut, Louisiana, Mississippi and North Dakota, Texas, Oregon, Idaho, California and Arkansas are using alternatives like early release for non-violent inmates to ease the budget; while addressing the legitimate safety concerns of citizens and the need to help offenders take control of their lives to become productive citizens of society.

While Michigan signed into law a bill repealing the States mandatory minimum sentencing laws for drug crimes (non-violent), thus giving the judge the discretion to sentence offenders to probation or jail time as see fit. These steps reduces the number of first time offenders going to prison, therefore saving the tax payers millions of dollars.

The Federal system is currently home to over 170,000 men/women, 73% of these offenders are non-violent offenders. The average sentence is 120 months for non-violent crimes, the most popular charge is currently conspiracy this charge carries a minimum mandatory of TEN, 20, LIFE and due to this the system is over crowded with non-violent offenders at the cost of housing each offender for one year at 22K. With the population of the BOP the budget from year to year is almost 3.74BILLION you do the math if it don't help it does not make sense.

This is a citizens reply to the proposal for amending the U.S. Sentencing Guidelines. Give those that are non-violent offenders a chance to re-enter society and give back to their community and provide for the children and families that are innocent victims of their crimes. Any changes to the U.S.S.G should assist in releasing those that have been in the prison system for far to long because of the minimum mandatroy sentencing that are way to excessive.

Thank you for taking time out to review the issues . Being a citizen of the United States gave me this chance to address these issues with you. The Education System, Health System and the Welfare System is suffering so why are tax dollars going to the BOP when they can used for the well being of the citizens whom are paying the taxes.

Citizen of the U.S.A.

(5)

[120]

SITE OF RESEARCH:

Clerk of Court @
Federal Courthouse Square
301 North Miami Avenue, Rm. 105
Miami, FL 33128-7788

611 United States Courthouse
80 North Hughey Avenue
Orlando, FL 32801

2211 Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, G.A. 30303

210 Charles R. Jonas Federal Building
401 West Trade Street
Charlotte, N.C. 28202

Strom Thurmond Federal Building
1845 Assembly Street
Columbia, SC 29201

Albert V. Bryan United States Courthouse
401 Courthouse Square
Alexandria, VA 22314

Federal Prison Journal 2002

United States Sentencing Guidelines 2002

JANUARY 30, 2003

U.S. SENTENCING COMMISSION
ONE COLUMBUS CIRCLE N.E.
SUITE 2-500, SOUTH LOBBY
WASHINGTON, DC 20002-8002

PUBLIC COMMENT:
CONCURRENT SENTENCES

COULD THE SENTENCING COMMISSION TAKE IN CONSIDERATION, AND HELP THE FELONS THAT MOST NEED A CONCURRENT SENTENCE. THE FELONS THAT GET PUNISHED DOUBLE FOR THE SAME STATE CHARGE! THE FELONS THAT GET THERE FEDERAL CHARGE ENHANCED UNDER 4B1.2 BECAUSE OF THERE STATE CHARGE, THEN RUN CONSECUTIVE TO THE SAME STATE CHARGE! THIS 4B1.2 SHOULD BE ONE OF THE MECHANISMS THAT TRIGGER A CONCURRENT SENTENCE. THE 4B1.2 IS COUNTED IN THE BASE OFFENSE LEVEL IN CHAPTER 4. THEY ARE THE MOST NEEDING THE CONCURRENT SENTENCE AND WOULD STOP THE DOUBLE COUNTING ON THEM FOR THE SAME STATE CHARGE. IT IS INCORPORATED IN THE BASE OFFENSE UNDER 4B1.2. SO THEREFORE IT SHOULD BE ADDED IN BESIDE RELEVANT CONDUCT 1B1.3 UNDER 5G1.3(B).

I ALSO READ RUGGIANO V. REISH 307 F3D 121. I AGREE WITH THAT COURTS. SHOULD HAVE AUTHORITY UNDER 5G1.3(C) IN CASES THAT UNDER 4B1.2. KEEP THE DEFENDANT FROM BEING PUNISHED DOUBLE.

THANK YOU,

Harold Gargen

JANUARY 30, 2003

U.S. SENTENCING COMMISSION
ONE COLUMBUS CIRCLE N.E.
SUITE 2-500, SOUTH LOBBY
WASHINGTON, DC 20002-8002

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THANK YOU,

Sanya Sargent

JOHN J. SHORTER

Reg. No. 03970-027, P.O. Box 5000, Greenville, Illinois 62246

February 21, 2003

Michael Courlander,
Public Affairs Officer
U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002

RE: Public Comment On Proposed Amendment(s): §5G1.3(b)
And Its Retroactive Application

Dear Mr. Courlander:

I am writing as someone who will be directly affected by the proposed amendments to §5G1.3(b), assuming retroactivity. I have spoken to and written your office on several different occasions regarding the unjust "Crack-Law" and most recently the 2002 Application Note 7 (Downward Departure Provision) to the Commentary of §5G1.3(b). (See your attached response.)

My Brief Case History

I have been incarcerated since April 11, 1990, shortly after my 22nd birthdate. I am a first time non-violent "Crack-Law" offender serving a 30 year concurrent sentence. Prior to my federal arrest I was serving a 6 year state (Fort Wayne, Indiana) sentence for the same offense. A fact that has been repeatedly acknowledged by my federal judge, the government and the probation department. I was taken in to federal custody on May 6, 1993, prior to the discharge of my state sentence. Unfortunately, I was again convicted and later sentenced federally to 30 years without receiving an adjustment for the 6 years I completed on the related state case.

At the time of my federal sentencing the 6 year state sentence had been discharged and, as a direct result, the judge refused to apply §5G1.3(b) ('94 version), citing a lack of authority. However, he did instruct me to take the issue to the Bureau of Prisons ("BOP") which, I did. And the BOP has steadfastly denied my repeated requests for the proper adjustment of my sentence since 1994. Therefore, my ultimate sentence is: 6 years state plus 30 years federal with a 5 year Supervised Release Term (41 years); for a first time non-violent offense.

2002 Application Note 7

In the previous amendment cycle the Commission issued a

a clarifying amendment to §5G1.3(b). Therein, agreeing with United States v. Blackwell, 49 F.3d 1232, 1241-42 and n.20 (7th Cir. 1995). This case held and the Commission agreed, that "distinguishing between two defendants merely by virtue of their sentencing dates appears contrary to the Guidelines 'goal of eliminating unwarranted sentence disparities.'" In addition it was rightly noted that "it perhaps could be argued that applying the guidelines to undischarged sentences but not to discharged sentences lacks a rational basis and therefore violates the Constitution." The acceptance of these facts by the Commission clearly argues in favor of retroactive application. This is true simply because if it is unjust and unconstitutional now, then it was unjust and unconstitutional then and the U.S. Constitution remains unchanged.

2003 Proposed Amendment To §5G1.3(b)

I am very pleased and relieved that the Commission is again addressing this important issue to achieve the Guidelines stated goals. Upon reviewing the amendment options, I believe that "Option Two B" is more appropriate. This option gives judges more latitude to fashion fair sentences in particular cases. In addition I assert that the application of this option should be mandatorily applied [shall]. Therefore, judges will not be unnecessarily restricted and at the same time required to apply the fairness this amendment permits.

In my particular case either option would apply, however, the additional specific requirement that any increase be directly relevant is unnecessary. Any fact that increases the instant offense should be considered in tandem with the instant case. This would promote fairness and give judges the option to more fully exercise the authority it has been granted by the Constitution.

Retroactivity of 2003 Proposed Amendment

The importance of the recognition that §5G1.3(b) should be overhauled in the suggested manner is proof positive that it should be extended to every case it affects. In my limited research on the effect of this amendment, I have found that it will not open the flood gates and release thousands of underserving defendants. Using my specific case as an example the direct affect of retroactively applying this amendment would be as follows: 6 years state - 30 years federal = 24 years to serve with an additional 5 years of supervised release.

The judge in my case specifically instructed me to address my issue with the BOP in the first instance but the BOP refuses to adjust my sentence. Should I not have an opportunity to redress the unjust sentence I received? The judge in my case stated on numerous occasions, during my post conviction proceedings, that he believed the sentence was extremely severe but that his hands were tied by the Guidelines. Even with the reduction in my sentence I would still be required to serve over 20 years in prison. Twenty years or more of incarceration is very harsh for a first time non-violent offender.

Issue For Comment: §5G1.3(c)

I address this issue in light of the potential effect it could have on §5G1.3(b). I believe the Commission should address this issue and resolve it in favor of the holdings of Ruggiano v. Reish, 307 F.3d 121 (3d Cir. 2002). I believe the case itself articulates the specific reasons of why and how this issue should be resolved. Infact I submit that the courts should be able to grant "credit" for time served in state prison for an undischarged sentence, in addition to running the federal sentence concurrently with the remaining portion of a defendant's preexisting sentence, as well as be able to grant this credit for discharged sentences.

Ruggiano exhausted his BOP remedies first and then filed a § 2241 petition with district court. I believe that this option should be available to §5gl.3(b) situations as well, especially if the Commission does not specifically make the amendments to §5G1.3(b) retroactive.

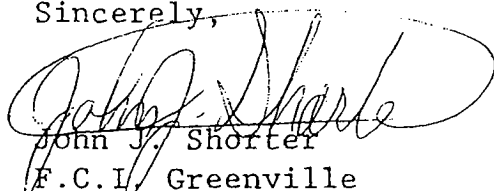
The current proposed amendments to §5G1.3 are substantial in comparison to last year's 2002 Application Note 7 (Downward Departure Provision), which was merely clarifying. The Commission's imposed authority should be used to address and apply the Guidelines in an even-handed manner. As a result, I urge the Commission to considers the comments offered by someone who's life and family's life will be tremendously affected by the actions taken on these proposed amendments.

Conclusion

In closing, I would like to thank you for the opportunity to voice my comments and sincere passions on the above issues. I pray that compassion would continue to overrule the political roadblocks which may be erected by some of those who do not face the affects of this concern directly.

Also, if this commission would like for me to submit any specific information that it deems helpful, please do not hesitate to contact me or even consider my signature below as permission for the Commission to use my specific sentencing information any way it seems appropriate.

Sincerely,



John J. Shorter
F.C.I. Greenville
P.O. Box 5000
Greenville, IL
62246

UNITED STATES SENTENCING COMMISSION
ONE COLUMBUS CIRCLE, N.E.
SUITE 2-500, SOUTH LOBBY
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October 10, 2002

John J. Shorter
Reg. No. 03970-027
P.O. Box 5300
Adelanto, CA 92301

Dear Mr. Shorter:

Your letter to the Commission has been referred to me for response. The recent amendment proposed to U.S.S.G. §5G1.3 has not been authorized by the Commission for retroactive application. I have no further information concerning the Commission's April 15, 2002 recommendations to Congress on crack cocaine sentences.

Very truly yours,

A handwritten signature in cursive script that reads "Michael Courlander".

Michael Courlander
Public Affairs Officer

Craig Patterson
Reg. No. 09385-045
USP Leavenworth
Post Office Box 1000
Leavenworth, Kansas 66048
Mrs. Diana Murphy - Chair

Re: "Crack" Cocaine Sentencing Policy

February 18, 2003

Dear Mrs. Murphy:

I am writing you after recently reading the report and recommendations that was filed to Congress (May 2002) dealing with the cocaine and "crack" cocaine sentencing policy.

Being a first time non-violent drug offender, I was very disturbed by your sentencing guideline results. I believe I speak on the behalf of all non-violent drug offenders, which reaches in the tens of thousands, when I address this concern.

What troubles me and many others, is the five(5) kilogram gap (between 2.5 and 7.5 kilos) that comes into play at level 38 and 36 with your new model guideline that will apply with changing the 100-1 ratio to 20-1 dealing with "crack" cocaine. Must I also imply that it is this street word - "crack" - that has influenced the minds of the Sentencing Commission and Congress to summons these heinous forms of punishment.

If the 100-1 ratio is unfair, then 20-1 ratio must also be unfair. I ask you a question, why is "crack" the only illegal drug with a spacious ratio? Since your report shows that it is unjust to Blacks and Latinos, it would be just to say that race is the reason why.

The concern is great because with changing the "crack" law to 20-1, there will still be tens of thousands of non-violent drug offenders that will not feel any effect of the change, due to the five(5) kilogram differential.

To my understanding, these laws were inacted mainly for "Drug Kingpins". Ask any Black or Latino who has been convicted either with conspiracy of, or possession of five(5) to ten(10) kilograms of "crack" or cocaine, is that person considered a "Kingpin". The answer is obviously **NO!** Inner City street dealers are being handed down sentences that should normally be awarded to suppliers that are shipping in hundreds upon hundreds, to thousands to tons of "powder cocaine".

It seems so easy for the Commission to present to Congress a law without any sufficient research of the outcome of the law or background of the problem, but after seventeen(17) years, cannot administer a cure. I question all of the Sentencing Commission to delve deeper into the fairness, reality, and rationality to obtain a result that aligns itself in truth. There is a short way to this destination, and that is the RIGHT WAY

Please find enclosed a copy of a motion that was prepared and filed in the Supreme Court by some 26 prisoners. This motion was denied review, i.e. the Supreme Court chose to not review the issues.(merits never addressed)

Thank you for earnest and sincere consideration of this matter.

*available
upon request
-on file with
Public Affairs*

Sincerely,

Craig Patterson
Craig Patterson
Reg. No. 09385-045
USP Leavenworth
Post Office Box 1000
Leavenworth, Kansas 66048

February 18, 2003

CC: Rueben Castillo - Vice Chair
William K. Session, III - Vice Chair
John R. Steer - Vice Chair
Sterling Johnson, Jr. Commissioner
Micheal E. O'Neill - Commissioner