

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

CHAMBERS OF
ROBERT W. PRATT
JUDGE
UNITED STATES DISTRICT COURTHOUSE
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July 7, 2014

The Honorable Patti B. Saris
Chair, United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Issue for Comment regarding retroactivity of the drug guidelines amendment

Dear Judge Saris:

We are district judges who sit in the Eighth Circuit and we write to urge that the Sentencing Commission make the lower guideline ranges for drug offenses that will go into effect on November 1, 2014 retroactive and to do so without conditions or exclusions that would limit eligibility. We do so because we believe justice demands it and because the date on which a person was sentenced should not dictate the appropriateness of their punishment. Rather, the factors we take into account every time we sentence – including the purposes of punishment, personal culpability, the features of the crime and individual characteristics – should bear the weight of determining whether someone will benefit from your recognition that lower drug guidelines better serve the goals of punishment.

We agree with you that the drug guidelines, influenced as they are by mandatory minimum sentences, place too much emphasis on the role of drug quantity. The Commission has proposed to change that reliance and we applaud you for doing so. The reasons you cite for lowering sentences going forward apply with even greater force looking back. Drug guidelines that exceed their mandatory minimums have been the starting point of our sentence calculations since the guidelines were adopted. Lowering our starting point for the future without correcting past is unfair.

The commitment to individualized consideration that we bring to every sentencing weighs decisively against categorical exclusions. We understand the challenge of balancing individualized justice and the protection of the public. To the extent that exclusions, such as those proposed by the Department of Justice, are intended as public safety proxies, they are valid ones. The proposed caveats -- for those whose sentences were enhanced for weapon possession or 18 U.S.C. § 924(c) conviction, threat or use of violence, aggravating role, and obstruction of justice and for anyone in Criminal History Categories III through VI -- will operate like mandatory minimums. They will cull otherwise deserving prisoners for no sound reason.¹ For

¹ We find the Department's position rather inconsistent when considered against the backdrop of its enthusiasm for the underlying two-level reduction and commitment to its immediate implementation. In our courtrooms the government has been stipulating to the two-level reduction – well before it goes into effect on November 1 -- without differentiating defendants with the enumerated enhancements or those whose criminal history categories fall between

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example, it is common for a defendant to receive an enhancement under U.S.S.G. § 2D1.1(b)(2) for a co-conspirator's weapon that she was neither involved with nor aware of. Why should that prisoner be denied the benefit of retroactivity? Each of the categorical exclusions suffers similarly from over-breadth. As judges, we are well equipped to sort out those who deserve early release from those who would pose a risk if released early. And we are reassured to know that prisoners who benefitted from retroactivity of the crack cocaine amendment did not reoffend at a different rate than their full term counterparts.

Retroactivity will serve the interest of public safety by reducing the number of people in federal prison. We commend the Commission for doing what it can to address the critical problem of prison overcrowding. Funding an expanding Bureau of Prisons consumes resources the Justice Department needs to prevent, fight and prosecute crime. As the Attorney General said when he addressed the Commission in March, lower drug guidelines and the bed space savings that would follow, will "help to rein in federal prison spending, while focusing limited resources on the most serious threat to public safety." While the amendment going forward will lower the federal prison population by more than 6,500, retroactivity will save over 83,000 bed years.

Simple retroactivity will also address the goal of avoiding unwarranted sentencing disparity that is shared by the Sentencing Guidelines and 18 U.S.C. § 3553(a). It would do so by treating prisoners in the same manner as similarly situated, albeit future, defendants convicted of the same crimes. We can think of no sound reason that could overcome our interest in fundamental fairness and convince us to turn our backs on potentially deserving prisoners based on enhancements or criminal history calculations.

Finally, we are acutely aware of the resource and court administration concerns posed by retroactivity. But, we look forward to engaging in collaborative efforts with Probation Officers, U.S. Attorneys' Offices and the Federal Public Defenders. Many of us benefitted from work to effectuate retroactivity of the two crack cocaine reductions in 2008 and 2010. We learned a great deal from those experiences. We expect that same collaboration to carry us in this effort. We are ready and able and willing to do the hard work of retroactivity.

Above all, however difficult this effort will be, it is the right thing to do. We cannot use our caseloads to excuse us from doing, as Judge Irene Keely put it, what fundamental fairness requires.

Thank you for considering our views.

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Sincerely,



Robert W. Pratt

The following U.S. District Judges have authorized me to add their names as signatories to this

/s/ John R. Tunheim
D. Minnesota

/s/ Michael J. Davis
D. Minnesota

/s/ Donovan W. Frank
D. Minnesota

/s/ Daniel L. Hovland
District of North Dakota

/s/ Audrey G. Flessig
E.D. Missouri

/s/ Donald E. O'Brien
N.D. Iowa

/s/ Charles A. Shaw
E.D. Missouri

/s/ Joseph F. Bataillon
D. Nebraska

/s/ John M. Gerrard
D. Nebraska

/s/ Ralph R. Erickson
D. North Dakota

/s/ Nanette K. Laughrey
W.D. Missouri

/s/ Carol E. Jackson
D. Missouri

/s/ Lawrence L. Piersol
D. South Dakota

/s/ Mark W. Bennett
N.D. Iowa

/s/ Lyle Strom
D. Nebraska

/s/ Karen Schreier
D. South Dakota

/s/ Roberto Lange
D. South Dakota

/s/ Jeffrey Viken
D. South Dakota

/s/ Billy Roy Wilson
E.D. Arkansas