UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
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SAVANNAH, GEORGIA 31412

WILLIAM T. MOORE, JR.
CHIEF JUDGE

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February 4, 2009

Ms. Judith Sheon, Staff Director
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

VIA FACSIMILE

Re: Draft of written statement to the Commission

STATEMENT

I thank the Commission for extending to me an invitation to testify at this hearing marking the 25th anniversary of the passage of the Sentencing Reform Act of 1984. I appear before you as the Chief Judge of the United States District Court for the Southern District of Georgia. However, my comments today represent the collective opinions of the three active judges and three senior judges on our Court.

The Advisory Sentencing Guidelines model is working very well. The advisory nature of the guidelines provides a fair balance of both consistency and flexibility to our Court. Most defendants convicted of similar offenses and who have similar situated criminal records fall within the same advisory guideline range. This allows courts across the country to impose fair, consistent sentences. Most defendants sentenced in our district receive a sentence within the advisory guideline range, not withstanding departures based on substantial assistance.

Some cases, however, involve circumstances concerning the offense or the defendant that the Sentencing Commission has failed to consider or adequately address. These cases, which are in the minority, allow the Court to either depart from the applicable guideline range or totally abandon the guideline system, via a variance, and impose a sentence based solely on the factors listed at 18 U.S.C.§ 3553(a). Overall, it appears that the advisory nature of the guidelines, and the reliance on § 3553(a) factors, allows the courts to more fully take into account the personal characteristics and personal backgrounds of defendants in ways that cannot be taken into account strictly by an offense level or criminal history computation. When the guidelines were mandatory, it was more difficult for courts to account for these factors in their sentencing decisions.

The guidelines serve as a model, taking into consideration the relevant factors that should influence sentencing. Our Court likes them as they are. Four of our six judges have experienced pre-guideline sentencing in Federal Court and we would dislike going back to the pre-guideline era. We believe that the advisory guidelines are rational, creative, and help to ensure some uniformity among the judiciary of all fifty states in sentencing people similarly situated. The guidelines should be maintained in their present form with little or no alteration.

The present federal sentencing system offers the Court an appropriate balance. If the Court does not wish to impose a sentence within the advisory guideline range, departure or a variance provides the Court with the discretion to impose an appropriate sentence. In our opinion, this strikes the appropriate balance between judicial discretion, and uniformity and certainty in sentencing.

The offense and offender characteristics are adequately considered in our current system. If a case is seen as typical, a sentence within the advisory guideline range is usually imposed. If there is something atypical about the offense or the defendant, the Court has the discretion to impose a sentence outside the advisory guideline range. We would like to see very little change in federal sentencing. There are, however, some members of our Court who believe that armed robbery, and specifically armed bank robbery, should be judged more severally and sentenced accordingly than the present guidelines call for.

Consistent with the current practice, the sentencing factors set fourth in 18 U.S.C. § 3553(a) should be thoroughly considered in all cases. If the advisory guideline range adequately addresses all § 3553(a) factors, a sentence within the advisory guideline range should be imposed; however, if the range does not adequately address one or more of the § 3553(a) factors, a sentence outside the advisory guideline range should be imposed. We are of the view that the overwhelming number of sentences should be within the guidelines. Judges are not infallible, and the public and Congress would have far more confidence in federal sentencings that are fairly consistent throughout all fifty states.

Our Court is generally not aware of appellate statistics, at least in terms of whether more appeals have been filed since *Booker* than before. It is apparent, however, from our review of appellate decisions that appellate courts are looking for sentencing courts to fully articulate their reasons for imposing sentences within or outside the guideline range.

I believe that there is a view among some judges that the right of appellate review of sentences that fall within the guidelines based on a plea of guilty should be abolished. There is a belief that appeals in these cases are a waste of time and take up too much of the district court's and the appellate court's time.

We do not have any recommendations to the Commission regarding the Federal Rules of Criminal Procedure. Change usually makes for less confidence in the criminal justice system.

There is a view among some judges that statutory penalties should be increased, including the enactment of mandatory minimums in cases involving repeat fraud/theft offenses. Our district has sentenced several repeat fraud offenders whose advisory guidelines did not adequately address the harm caused by their actions, the seriousness of their criminal histories, or the likelihood that they would continue in such criminal acts. Several of these defendants had prior convictions for similar offenses and they were "slapped on the wrist" by state courts.

Also, as I have previously indicated, there is an opinion among some judges that a prisoner should not have the right to file an appeal after pleading guilty and receiving a sentence within the advisory guidelines. Post-sentencing appeals should be re-examined. There are too many motions, and non-meritorious litigation post-sentencing is a burden on the system.

Finally, pursuant to U.S.S.G. § 5K3.1, upon motion of the Government, the Court may depart downward not more than four levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the Court resides. In my personal opinion, defendants prosecuted in districts which do not have a fast-track program should be eligible for the same downward departure as like defendants in bordering districts that have a fast-track program. The fast-track program creates a disparity in sentencing between defendants who commit the same offense, but in a different state. In my opinion, it should not make any difference in what state you committed the offense; it should be what offense a defendant committed compared to the offense committed by other defendants within a state that has a fast-track program. This fast-track program creates a built-in disparity in sentencing that the guidelines were designed to eliminate.

Sincerely,

William T. Moore, Jr.
Chief Judge, United States District Court

WTMjr/bdo