

2016
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Key Supreme Court Cases on Sentencing: 2016 Annual National Seminar

Ex Post Facto

Peugh v. United States, 133 S. Ct. 2072 (2013). The Ex Post Facto Clause of the Constitution prohibits a court from sentencing a defendant pursuant to a guideline that produces a higher range than the guideline in effect at the time the defendant committed the offense.

Rehabilitation as a Factor at Sentencing

Tapia v. United States, 131 S. Ct. 2382 (2011). The court may not imprison a defendant or lengthen a defendant's sentence in order to promote the defendant's rehabilitation.

Pepper v. United States, 562 U.S. 476 (2011). When a defendant's sentence has been set aside on appeal, a court may consider the defendant's post-sentencing rehabilitation and may vary downward based on that factor.

Notice for a Variance

Irizarry v. United States, 553 U.S. 708 (2008). The district court is not required to notify the parties in advance of imposing a sentence that is a variance from the guidelines. In contrast, the court must provide advance notice of a departure.

Standard of Review

Gall v. United States, 552 U.S. 38 (2007). Failure to calculate the correct guidelines range constitutes procedural error. On appeal, the district court's sentence is reviewed for reasonableness under an abuse-of-discretion standard.

Policy Disagreement with the Guidelines

Kimbrough v. United States, 552 U.S. 85 (2007). The court may consider its own disagreement with guidelines policy in determining a sentence, however, "a district court's decision to vary from the advisory guidelines may attract greatest respect when" it is based on the particular facts of a case.

Presumption of Reasonableness

Rita v. United States, 551 U.S. 338 (2007). The appellate court may, but need not, apply a presumption of reasonableness to a sentence within the guideline range. The Fourth, Fifth, Sixth, Seventh, Eighth, Tenth and D.C. Circuits have adopted a presumption of reasonableness. The other circuits have not.

Guidelines Are Advisory

United States v. Booker, 543 U.S. 220 (2005). The Sixth Amendment right to trial by jury on facts that increase the sentence that may be imposed applies to the Sentencing guidelines. The Court

excised two provisions of the Sentencing Reform Act, rendering the guidelines advisory.

Self-incrimination at Sentencing

Mitchell v. United States, 526 U.S. 314 (1999). A guilty plea does not waive the defendant's right to remain silent at sentencing, and the court may not draw any adverse inference from the defendant's silence in determining facts about the offense.

United States v. Watts, 519 U.S. 148 (1997). A jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence.

Relevant Conduct

Witte v. United States, 515 U.S. 389 (1995). A court may consider relevant conduct in determining the sentence. The consideration of relevant conduct punishes the offender "for the fact that the present offense was carried out in a manner that warrants increased punishment, not for a different offense (which that related conduct may or may not constitute)."

Significance of Guideline Commentary

Stinson v. United States, 508 U.S. 36 (1993). Commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.

Motions Based on the Defendant's Substantial Assistance to the Government

Melendez v. United States, 518 U.S. 120 (1996). A government motion under §5K1.1, requesting a sentence below the applicable guideline range does not authorize the district court to impose a sentence below the statutory minimum. A sentence below the statutory minimum is authorized only if the government files a separate government motion pursuant to 18 U.S.C. § 3553(e).

Wade v. United States, 504 U.S. 181 (1992). A prosecutor may not refuse to file a substantial assistance motion under §5K1.1 based on an unconstitutional motive. If such a violation occurs, the court may grant a remedy.



Glossary of Sentencing Terms:

2016 Annual National Seminar Sentencing Terms

Appendix A: This index specifies the offense guideline in Chapter Two applicable to the statute of conviction. The Chapter Two guideline is then used to establish the offense severity level, which is reflected on the vertical axis of the sentencing table and in part determines the guidelines range.

Application Note: Commentary following a guideline that provides additional guidance about how a particular guideline provision should be applied. Application notes define terms used in the guideline and provide examples and other clarifying information.

Base Offense Level (“BOL”): Found in all Chapter Two guidelines, the base offense level is the starting point for determining the offense-severity level for an offense. Specified aggravating and mitigating facts may increase or decrease the offense-severity level.

Criminal History Category (“CHC”): The category assigned to the defendant based on the defendant’s prior criminal history. Criminal history category is determined according to rules contained in Chapter 4 of the Guidelines Manual. The criminal history category is reflected in the horizontal axis of the sentencing table. A higher criminal history category increases the guidelines range.

Cross Reference: A provision in some Chapter Two guidelines that directs the Court, under certain circumstances, to apply a different guideline than the one referenced in Appendix A.

Departure: A sentence either above or below the guideline range based upon one or more factors in the Guidelines Manual. The most commonly applied departure is the downward departure based on the defendant’s substantial assistance to the government in the investigation or prosecution of others. The substantial assistance departure is found at USSG §5K1.1. Other departures are located throughout the Guidelines Manual.

Good Time Credit: Refers to the reduction of up to 54 days per year a defendant may earn for good conduct in prison. The Bureau of Prisons awards the credit, which applies to sentences greater than 12 months.

Grouping: Term used to describe the rules that apply when a defendant is being sentenced for multiple counts of conviction. For certain offenses, multiple counts are treated as one count of conviction when determining the guidelines range. (e.g., drugs offenses, fraud) For other offenses, a separate guidelines range is calculated for each count of conviction, and the grouping rules determine the incremental increase in punishment for each additional count. (e.g., robbery, assault) (See Chapter 3, Part D of the Guidelines Manual).

Historical Note: Historical notes to each guideline provision list each time the guideline was amended. The text of each amendment is located in Appendix C of the Guidelines Manual.

Mandatory Minimum: The minimum sentence, as mandated by statute, that must be imposed for an offense. The most frequently encountered offenses with mandatory minimums are drug trafficking offenses. Two mechanisms allowing a sentence below the mandatory minimum include a government motion for substantial assistance, and the safety valve, both of which are codified in statutes.

Offense Level: The severity-level of an offense, determined in Chapters 2 and 3 of the Guidelines Manual and reflected on the vertical axis of the sentencing table.

Presentence Report (“PSR”): A report, filed under seal by a probation officer, which contains information about the offense and offender, the statutory range of punishment, and the guidelines calculation, as well as any bases for imposing a sentence above or below the guideline range.

Relevant Conduct: This provision, located at §1B1.3, specifies the conduct for which a defendant may be held accountable in the determination of the offense level. The conduct need not have been formally charged or proved at trial, so long as the sentencing court finds the facts by a preponderance of the evidence. Relevant conduct may include the defendant’s conduct as well as the conduct of others under certain circumstances.

Safety Valve: Codified at 18 U.S.C. § 3553(f), this provision allows the court to sentence a defendant without regard to an otherwise applicable mandatory minimum term of imprisonment. The corresponding guidelines provision is USSG §5C1.2.

Sentencing Table: Found in Chapter 5 of the Guidelines Manual and reprinted on the back cover, the table contains the guidelines ranges that correspond to the offense level and criminal history category determined by the court.

Specific Offense Characteristic (“SOC”): Aggravating or mitigating factors that, provided the court finds they exist, either increase or decrease the offense severity level.

Statement of Reasons (“SOR”): Court document (AO Form 245(b)), filed under seal, that provides certain details about the sentence and the reasons the court imposed it.

Supervised Release: Post-confinement monitoring of a defendant by a court, through the Probation and Pretrial Services Office. The primary purpose of supervised release is facilitating the defendant’s reentry into the community. The court sets conditions of supervised release at the time of sentencing but may modify them later, or may revoke a defendant’s supervised release and return the defendant to prison.

Variance: A sentence above or below the guideline range based upon one or more of the factors listed at 18 U.S.C. § 3553(a)(1) - (7).

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The United States Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines provide structure for the courts’ sentencing discretion to help ensure that similar offenders who commit similar offenses receive similar sentences.