UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

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JUDICIAL DISCRETION AND FEDERAL SENTENCING

Judges are bound by the rule of law. But the rule of law is not inflexible. Judicial discretion is the power judges have to exercise their judgment, act based on the evidence before them, and consider the circumstances of individual cases. It enables judges to make decisions based on the facts in front of them and allows for flexibility when the situation calls for it.

Discretion is often associated with arbitrariness, personal dispositions, and opinions. Chief Justice Marshall viewed discretion differently. He viewed courts as "the mere instruments of the law," and stated that "[j]udicial power is never exercised for the purpose of giving effect to the will of the Judge," but rather "to the will of the law." When judges exercise discretion, they are doing so in a manner that carries out the duly enacted laws, not their personal preferences or views.

JUDGES HAVE DISCRETION IN CONSIDERING CRIMINAL SENTENCES

There are some areas over which judges have little discretion. For example, judges have no discretion about whether to follow the U.S. Constitution. But there are other areas over which Congress has given judges wide discretion. One of those areas is in criminal sentencing.

A conviction is only part of a criminal case. After a criminal defendant is convicted, judges move into the second phase of the administration of justice—sentencing. In the federal system, judges consult different resources to decide what punishment is proper.

Congress has given judges guidance in imposing a sentence. These factors are outlined in 18 U.S.C. § 3553(a). They encourage consideration of the nature and circumstances of the crime, the history and characteristics of the defendant, and the need for the sentence to reflect the seriousness of the crime, promote respect for the law, provide just punishment for the offense, deter criminal conduct, protect the public, and provide the defendant with appropriate treatment.

This language is very broad and allows for wide judicial discretion. But guideposts have been established to avoid extreme discrepancies in criminal sentences. Congress sought to limit the variability of sentences for the same crime based simply on the ideology of the judge or

economic and geographic differences. This is where the United States Sentencing Guidelines come in.

UNITED STATES SENTENCING GUIDELINES

The United States Sentencing Guidelines are published by the United States Sentencing Commission. The Sentencing Commission is a bipartisan expert agency established by Congress in 1984 in response to sentencing disparities. Congress, in creating the Sentencing Commission, wanted to ensure more nationwide uniformity in criminal sentences.

The guidelines assign each crime an offense level based on its severity and other factors. Each crime has a base offense level, but may have enhancements, such as if the defendant used a gun to commit the crime or if the defendant committed a violent act during the commission of the crime. The guidelines also assign criminal defendants a criminal history score based on their prior criminal history. Defendants with more extensive criminal histories have a higher score, thus producing a higher range for their recommended term of imprisonment.

Together, these two scores are triangulated to produce a suggested range of months imprisonment based on a table the Sentencing Commission produces. For example, a criminal defendant with an offense level of 25 and a criminal history category of II would have a recommended sentence range of 63–78 months.

GUIDELINES ARE NOT MANDATORY

Until 2005, these guidelines were mandatory. Judges were required to follow them in pronouncing sentences. In 2005, the United States Supreme Court found that this was unconstitutional, and judges were not strictly required to sentence within the guideline ranges. The Supreme Court reasoned that mandatory guideline ranges, acting as a mechanical formula, violated the Defendant's Sixth Amendment rights. The Supreme Court thus found that the Constitution required judges to have discretion over sentencing.

While judges no longer have to follow the Sentencing Guidelines, they are still "advisory" and provide useful guidance. Judicial discretion is guided by the rule of law, and the Sentencing Guidelines help courts impose sentences that are fair and similar to sentences for similarly situated individuals and crimes. The guidelines help judges consider relevant factors in sentencing while still allowing the flexibility to vary above and below the recommended range as they see fit. But, as noted above, while the guideline ranges are not mandatory, judges still must consider the factors outlined in 18 U.S.C. § 3553(a) in imposing their sentence.

CONCLUSION

Allowing judges discretion in sentencing allows them to account for the unique circumstances of each individual in sentencing. In a sentencing hearing, for example, a judge must allow a defendant to give an allocution, or a chance to speak to the court before the sentence is imposed. Sometimes family members and friends submit character references on

behalf of the defendant. Other times, defendants have particularly compelling personal histories or circumstances that add color to their situation. Judicial discretion allows judges the latitude to consider all of these factors in determining the appropriate sentence alongside the Sentencing Guidelines.

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