Vol. 22 No. 2 Second Quarter - June, 2009

NATIONAL LEGAL PROFESSIONAL ASSOCIATES

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Newsletter

Legal News Briefs for Law Libraries & Defense Attorneys

OBAMA SEEKS CRACK-COCAINE SENTENCE CHANGES
CONGRESS URGED TO EQUALIZE PENALTY, CORRECT RACIAL DISPARITY. CHANGE BEGINS NOW

It's been a long time coming but we finally have taken another giant step in helping defendants involved in crack-cocaine offenses be able to receive a sentence that is consistent with individuals who were involved with powder cocaine. As you will see from reading this memo, the Department of Justice has conceded that crack-cocaine offenses **should be sentenced on a 1:1 basis**. **Many judges are now beginning to follow this new policy.**

For nearly fifteen years the United States Sentencing Commission has consistently warned that the penalty disparity between offenses involving powder cocaine and offenses involving "crack" cocaine has produced results that are unconstitutional. The 100:1 ratio for powder and crack-cocaine utilized in the Anti-Drug Abuse Act has unfortunately resulted in crack-cocaine offenders receiving sentences far in excess of what they should have been. In has been disputed that under this prior sentencing scheme, the heightened penalties applied to "crack" cocaine offenses disproportioned the impacts upon African-American defendants. Because of this, the Obama Administration has finally stepped forth to end this discriminatory practice.

Recently Assistant Attorney General, Breuer testified before congress making it clear that the Obama Administration would not rest until the pending legislation to remove the 100:1 ratio for crack-cocaine sentencing is passed ending a racial disparity by equalizing prison sentences for dealing and use of crack-cocaine versus powder cocaine. During his testimony before the Department of Justice Judicial Committee on April 29, 2009, Lanny A. Breuer, Assistant Attorney General, Criminal Division, Department of Justice stated, "*The Administration believes that Congress' goal should be to completely eliminate the sentencing disparity between crack-cocaine and powder cocaine...A growing number of citizens view it as fundamentally unfair*". Of course, the enabling legislation to eliminate this disparity completely is still pending but, there is no doubt that it will be passed soon. In the meantime, the good news is that the Department of Justice has now recognized and accepted the fact that the change is going to occur and has stated that it will recognize the 1:1 ratio in future cases.

"Jails are loaded with people that look like me", U.S. District Judge Reggie Walton, an African-American told a senate judiciary committee when he appeared before it in April, 2009. Senator Dick Durbin, an Illinois Democrat who chairs the subcommittee on the crack-cocaine matter said, "*Under current law, mere possession of 5 grams of crack - the weight of five packets of sweetener - carries the same sentence as the distribution of a half kilogram of powder or five-HUNDRED packets of sweetener*". Senator Durbin said that more than 81% of those convicted for crack offenses in 2007 were African-Americans.

David W. Ogden, Deputy Attorney General of the United States has also issued a policy statement to all federal prosecutors concerning this matter. Deputy Attorney General Ogden confirms that the Attorney General has asked him to form and lead a working group on federal sentencing and corrections policy to develop proposals to eliminate the disparity.

As you know, in 2007 the U.S. Sentencing Commission did as much as possible to lessen the harmful impact of the crack-cocaine penalties by amending §2D1.1(c) of the Guidelines. This amendment reduced the base offense level for "crack" cocaine by two levels. Accordingly, many crack-cocaine defendants were able to receive a minor reduction in their sentence. However, the changes proposed by the Obama Administration are far more reaching and will have a significant impact on further reducing sentences. Therefore, for defendants who may have already received a minor reduction by filing a §3582 motion, they need to discuss with their counsel going back to court for a further and for **more significant reduction**.

The U.S. Department of Justice has now issued memoranda to various U.S. District Attorney Offices and the United States judges outlining the new Department of Justice policy in this regard. An example of the new policy letter is attached to this memorandum which is from Sharon L. Potter, United States Attorney to the Honorable John Preston Bailey, Chief Judge for the Northern District of West Virginia.

In the policy statement, U.S. Attorney Potter states that the starting point for sentencing in crack-cocaine cases is now a 1:1 ratio. As the result of this new Department of Justice policy, NLPA has begun to see judges taking into consideration this new, more lenient policy by imposing much lower sentences in crack-cocaine cases than they otherwise would have. In a recent opinion issued by Hon. Judge Paul L Friedman in the case of US vs. Lewis (2009 U.S. Dist. LEXIS 48081) Judge Friedman stated in part:

> *"In short, it now is established that a sentencing court may reject the 100-to-1 ratio of the Guidelines as a* **[*8]** *matter of policy and without regard to the characteristics of the individual defendant. But this raises another question: If the sentencing court rejects the 100-to-1 ratio, then what ratio should it apply? For reasons stated by this Court in this and other cases and by the D.C. Circuit in Pickett, this Court previously had adopted a 20-to-1 ratio and, in each case, explained its reasons for applying that ratio.* ***For the reasons explained below, this Court now adopts a 1-to-1 crack-to-powder ratio, and will apply the 1-to-1 ratio in all crack cocaine cases that come before it for sentencing in the future.*** *In other words, this Court will take precisely the approach endorsed by the Supreme Court in Spears..."*

In conclusion, does this new change in policy accomplish everything we need to pursue? The answer, of course, is "no". Not until the U.S. Sentencing Guidelines and the federal law are changed to completely eliminate any enhancement due to crack-cocaine will the problem be completely eradicated. However, in the meantime, defense attorneys now have the ability to raise this critical issue in sentencing memoranda and post-conviction motions to help a crack-cocaine defendant receive a lower sentence.

If you have a client who is waiting to be sentenced in a crack-cocaine case or, if you have a client who has already been sentenced but who would like to look into the significant possibility of achieving a reduction in sentence due to this new policy, please contact NLPA!

US v. Lewis (2009 U.S. Dist. LEXIS 48081)

OPINION

This matter came before the Court for a second resentencing on June 1, 2009. Defendant Anthony T. Lewis previously pled guilty to one count of a five-count indictment, each of which charged unlawful distribution of five grams or more of cocaine base. At the time of his plea, Mr. Lewis acknowledged that he was accountable for 187.7 grams of cocaine base, also known as crack cocaine. Mr. Lewis has 17 criminal history points and therefore his Criminal History Category is VI.

At the original sentencing on October 14, 2005, the Court applied a 20-to-1 crack-to-powder ratio rather than the 100-to-1 ratio contained in the Sentencing Guidelines. Had the Court applied the crack Guidelines as they existed on October 14, 2005, including the 100-to-1 ratio, Mr. Lewis would **[*2]** have been at Offense Level 31, Criminal History Category VI, resulting in a sentencing range of 188 to 235 months. At the first resentencing on December 21, 2007, the Court again applied a 20-to-1 ratio, even though the crack Guidelines had recently been amended in a way favorable to Mr. Lewis. (The amendments ameliorated the previous disparity, but not entirely. Applying them would have put Mr. Lewis at Offense Level 29, Criminal History Category VI, resulting in a sentencing range of 151 to 188 months.) By applying a 20-to-1 ratio at both sentencings, the Court reached the conclusion that Mr. Lewis was at Offense Level 27, Criminal History Category VI, which corresponded with a sentencing range of 130 to 162 months. For the reasons then explained, the Court sentenced Mr. Lewis to 162 months imprisonment -- that is, the high end of the range -- on both occasions. [1]

> 1 The procedural history of this case and why it is before the Court for a second resentencing are not germane to this Opinion, but can be found in the prior decisions and orders of the D.C. Circuit as well as the parties' filings. See *United States v. Lewis, No. 08-3002, 2009 U.S. App. LEXIS 5462*, Order (D.C. Cir. Mar. 13, 2009); *United States v. Lewis, 471 F.3d 155, 374 U.S. App. D.C. 32 (D.C. Cir. 2006).* **[*3]** See also Government's Memorandum in Aid of Second Resentencing at 1-4 (May 14, 2009).

At the second resentencing on June 1, 2009, as a matter of policy the Court adopted a new approach to sentencing in crack cocaine cases, an approach it will take in this case and in all future crack cocaine sentencings. Henceforth, this Court will apply a 1-to-1 crack-to-powder ratio and then, in appropriate cases, will vary upward to take account of any aggravating factors that may exist. This Opinion explains the Court's reasoning for adopting the new approach.

I.

Shortly after the Supreme Court decided in *United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005)*, that the United States Sentencing Guidelines are advisory only, this Court began to apply a 20-to-1 crack-to-powder ratio in crack cocaine sentencings. Recognizing that after Booker and under *18 U.S.C. § 3553(a)* the Sentencing Guidelines were only one factor to consider in sentencing, this Court considered both the policy concerns underlying the crack/powder disparity and the *Section 3553(a)* factors as they applied to the individual being sentenced. The Court acknowledged that post-Booker the Sentencing Commission's expertise still entitled the Guidelines **[*4]** to serious consideration, see, e.g., *Booker v. United States, 543 U.S. at 245*; *Gall v. United States, 552 U.S. 38, 128 S. Ct. 586, 596-97, 169 L. Ed. 2d 445 (2007)*; *Kimbrough v. United States, 552 U.S. 85, 128 S. Ct. 558, 564, 169 L. Ed. 2d 481 (2007)*, but concluded that in the case of crack cocaine the Commission's expertise was reflected not in the Guidelines themselves, but rather in the numerous reports on the crack/powder disparity the Commission issued between 1995 and 2007.

This Court's approach was endorsed by the D.C. Circuit in *United States v. Pickett, 475 F.3d 1347, 374 U.S. App. D.C. 476 (D.C. Cir. 2007)*. In Pickett, the D.C. Circuit reviewed the history of the crack Guidelines and noted that the Sentencing Commission itself has been "one of [the] severest critics" of those Guidelines. *Id. at 1353*. Specifically, the court observed that "[f]or more than a dozen years," in numerous extensive reports, the Commission has argued strongly against retaining the 100-to-1 ratio. *Id. at 1353-54*. The court further noted the Commission's recommendation to substitute a 20-to-1 ratio, a recommendation on which Congress never acted. *Id. at 1351*. In the end, the D.C. Circuit not only concluded that sentencing judges have discretion under Booker to consider a 20-to-1 ratio **[*5]** -- rather than to apply rigidly the 100-to-1 ratio embodied in the crack Guidelines -- but suggested that it would be an abuse of discretion for a judge not to at least consider a 20-to-1 ratio. See *id. at 1356*.

Less than a year after the D.C. Circuit issued its opinion in Pickett, the Supreme Court announced its agreement with that approach in *Kimbrough v. United States, 552 U.S. 85, 128 S. Ct. 558, 169 L. Ed. 2d 481 (2007)*. Justice Ginsburg, writing for the Court, began by summarizing the history of the crack/powder disparity embodied in the 100-to-1 ratio. She noted that in formulating the crack Guidelines, the Sentencing Commission did not use its usual empirical approach, but rather employed the "weight-driven scheme" of Congress' 1986 Anti-Drug Abuse Act. In other words, the Commission set base offense levels for drug offenders by adopting the Act's 100-to-1 ratio throughout

the crack and powder cocaine Guidelines. *Id. at 567*; see also *id. at 575* (noting that "those Guidelines [therefore] do not exemplify the Commission's exercise of its characteristic institutional role"). This, the Court held, was not required by law. See *id. at 571-72*. Given the history of the crack Guidelines and the Commission's own view, **[*6]** reiterated on many occasions, that the crack/powder disparity produces disproportionately harsh sentences, the Supreme Court concluded that "it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence 'greater than necessary' to achieve *§ 3553(a)*'s purposes, even in a mine-run case." *Id. at 575*.

While it seemed clear from Kimbrough that courts had discretion to vary from the crack Guidelines based on the same sort of overarching policy disagreements expressed by the Sentencing Commission in its reports, and not just based on individualized factors in particular cases, there still were some courts that resisted that conclusion. This led to the most recent discussion of the matter by the Supreme Court in *Spears v. United States, 129 S. Ct. 840, 172 L. Ed. 2d 596 (2009)* (per curiam). Kimbrough, the Court said in Spears, recognized the authority of district courts to vary from the crack Guidelines "based on *policy* disagreement with them, and not simply based on an individualized determination that they yield an excessive sentence in a particular case." *Id. at 843* (emphasis in original). The Court also quoted **[*7]** with approval the dissent in the Eighth Circuit's en banc decision in Spears. In that dissent, Judge Colloton recognized that in Kimbrough the Supreme Court had established that even when a particular defendant in a crack cocaine case presents no special mitigating circumstances -- no outstanding service to country or community, no unusually disadvantaged childhood, no overstated criminal history score, no post-offense rehabilitation -- a sentencing court may nonetheless vary downward from the advisory guideline range. The court may do so based solely on its view that the 100-to-1 ratio embodied in the sentencing guidelines for the treatment of crack cocaine versus powder cocaine creates "an unwarranted disparity within the meaning of *§ 3553(a)*," and is "at odds with *§ 3553(a)*." The only fact necessary to justify such a variance is the sentencing court's disagreement with the guidelines -- its policy view that the 100-to-1 ratio creates an unwarranted disparity.

United States v. Spears, 533 F.3d 715, 719 (8th Cir. 2008) (en banc) (Colloton, J., dissenting) (citations omitted).

In short, it now is established that a sentencing court may reject the 100-to-1 ratio of the Guidelines as a **[*8]** matter of policy and without regard to the characteristics of the individual defendant. But this raises another question: If the sentencing court rejects the 100-to-1 ratio, then what ratio *should* it apply? For reasons stated by this Court in this and other cases and by the D.C. Circuit in Pickett, this Court previously had adopted a 20-to-1 ratio and, in each case, explained its reasons for applying that ratio. For the reasons explained below, this Court now adopts a 1-to-1 crack-to-powder ratio, and will apply the 1-to-1 ratio in all crack cocaine cases that come before it for sentencing in the future. In other words, this Court will take precisely the approach endorsed by the Supreme Court in Spears:

> A sentencing judge who is given the power to reject the disparity created by the crack-to-powder ratio must also possess the power to apply a different ratio which, in his judgment, corrects the disparity. Put simply, the ability to reduce a mine-run defendant's sentence necessarily permits adoption of a replacement ratio. . . . [D]istrict courts are entitled to reject and vary categorically from the crack-cocaine Guidelines based on a policy disagreement with those Guidelines.

Spears v. United States, 129 S. Ct. at 843-44.

II.

The **[*9]** Court concludes that there are sound policy reasons for adopting a 1-to-1 ratio for all crack cocaine sentencings. In doing so, the Court adopts the reasoning of Judge Mark W. Bennett in his recent decision in *United States v. Gully, Criminal No. 08-3005, 2009 U.S. Dist. LEXIS 42888, 2009 WL 1370898 (N.D. Iowa May 18, 2009)*. In that opinion, Judge Bennett reviewed in some detail the history of the crack/powder disparity, the Kimbrough and Spears decisions, the Sentencing Commission's view that the crack/powder sentencing disparity fosters disrespect for the criminal justice system by promoting unwarranted disparities, the welcome but incomplete ameliorating change in the crack Guidelines adopted by the Sentencing Commission in 2007, and other policy considerations. Based on his review of that history, Judge Bennett concluded that "it now appears that even the Commission's recommendation of a 20:1 ratio" -- the ratio that both Judge Bennett and this Court consistently applied following Booker -- "was influenced at least as much by prior congressional rejections of lower ratios [proposed by the Commission] and the policy considerations that Congress had mandated be part of the calculus of the appropriate ratio than **[*10]** by empirical evidence concerning the appropriate sentence for crack offenses." *United States v. Gully, 2009 U.S. Dist. LEXIS 42888, 2009 WL 1370898 at *7*.

As Judge Bennett explained in some detail in Gully, there are at least five distinct policy objections to a disparity -- any disparity -- between crack and powder cocaine sentences: (1) the current cocaine Guidelines "do not exemplify the Commission's exercise of its characteristic institutional role," *Kimbrough v. United States, 128 U.S. at 575*; see also *Spears v. United States, 129 S. Ct at 843*; (2) the assumptions about the relative harmfulness of crack and powder cocaine have not been borne out by the evidence; (3) the crack/powder disparity perversely tends to punish lower-level dealers more harshly than major traffickers because imported powder cocaine is converted into crack at a lower level in the trafficking hierarchy; (4) the 20-to-1 ratio "still improperly uses the quantity ratio as a proxy for various kinds of harm and violence that may or may not come with trafficking of crack cocaine in a particular case"; and (5) the crack/powder disparity fosters disrespect for and mistrust in the criminal justice system because of its disproportionate impact **[*11]** on African American defendants. *United States v. Gully, 2009 U.S. Dist. LEXIS 42888, 2009 WL 1370898 at *6-*7*. This Court agrees with Judge Bennett wholeheartedly.

The Court notes, as did Judge Bennett, that the Department of Justice recently endorsed completely eliminating the disparity between crack and powder cocaine sentencing. On April 29, 2009, Assistant Attorney General Lanny Breuer testified before the Subcommittee on Crimes and Drugs of the United States Senate Committee on the Judiciary. Assistant Attorney General Breuer testified that the Justice Department now supports an approach that would eliminate the disparity between crack and powder cocaine sentencing *and* fully account for any aggravating factors (such as violence, injury, recidivism or possession or use of weapons) in individual cases. See Statement of Lanny A. Breuer, Assistant Attorney General, Criminal Division, United States Department of Justice, Before the United States Senate Committee on the Judiciary, Subcommittee on Crime and Drugs, Hearing Entitled "Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity," at 10-11 (April 29, 2009). Notably, in his testimony Assistant Attorney General Breuer highlighted the **[*12]** same policy

objections to the crack/powder disparity that Judge Bennett discussed in Gully. See id. at 5-9.

In testimony at the same hearing, Judge Reggie B. Walton of this Court, testifying on behalf of the Judicial Conference of the United States, noted that experience has shown that "the existing disparity [between crack and powder sentences] may actually frustrate (instead of advance) the goals of the Sentencing Reform Act," and that there is now "almost universal support in the United States to reduce the existing sentencing disparity between crack and powder cocaine." Statement of Judge Reggie B. Walton, On Behalf of the Judicial Conference of the United States, Before the United States Senate Committee on the Judiciary, Subcommittee on Crime and Drugs, Hearing Entitled "Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity," at 6 (April 29, 2009). On behalf of the Judicial Conference, Judge Walton called for a reduction in or elimination of the crack/powder cocaine disparity and for the elimination of statutorily enacted mandatory minimum penalties. Id. at 8-9.

For all of these reasons, this Court disagrees, as a matter of policy, with both the amended **[*13]** 100-to-1 crack-to-powder ratio currently embodied in the Sentencing Guidelines and the 20-to-1 ratio the Sentencing Commission more recently endorsed for practical political reasons. The Court instead concludes that the appropriate ratio is 1-to-1. Thus, in the future, this Court will apply the 1-to-1 ratio in all crack cocaine cases and then will separately consider all aggravating factors applicable in any individual case, such as violence, injury, recidivism or possession or use of weapons. See *United States v. Gully, 2009 U.S. Dist. LEXIS 42888, 2009 WL 1370898 at *9.* [2]

2 This approach is consistent with the Guidelines revisions originally proposed by the Sentencing Commission in 1995 in its first report on the crack/powder disparity. See *United States v. Gully, 2009 U.S. Dist. LEXIS 42888, 2009 WL 1370898 at *6, *9.*

Henceforth this Court will employ a three-step approach -- or where mandatory minimum sentences are implicated, a four-step approach -- to sentencing in crack cocaine cases. First, it will calculate the sentencing range under the existing Sentencing Guidelines (*i.e.*, it will use the amended 100-to-1 ratio found in the Guidelines and then factor in any appropriate adjustments or departures contained within the Guidelines). Second, **[*14]** it will calculate an alternative sentencing range using a 1-to-1 ratio (by using the powder cocaine Guidelines) and then factor in any appropriate adjustments or departures contained within the Guidelines. Third, it will consider whether it is appropriate to vary from the alternative 1-to-1 sentencing range based on the Court's consideration of the relevant factors set forth in *18 U.S.C. § 3553(a)* as they apply to the individual defendant and the particular case -- including, but of course not limited to, any aggravating factors such as violence, injury, recidivism or possession or use of weapons. See *United States v. Gully, 2009 U.S. Dist. LEXIS 42888, 2009 WL 1370898 at *9*. While theoretically this could lead to a downward variance, in view of the Court's approach it would more likely lead to an upward variance in an individual case to take account of the defendant's history of violence, the use of violence in a particular case, injury to others, the presence or use of firearms or other weapons, or the defendant's recidivism. As a fourth and final step, the Court will of course implement any statutory mandatory minimums applicable to the case -- even though the statutory mandatory minimums themselves embody **[*15]** the now-discredited 100-to-1 ratio between crack and powder cocaine offenses.

III.

Applying that approach in this case, the Court looks to the powder cocaine Guidelines. Because Mr. Lewis acknowledged responsibility for 187.7 grams of crack cocaine at the time of his plea, the Court finds that Mr. Lewis' base offense level is now Offense Level 18. See *U.S.S.G. § 2D1.1(c)(11)*. Because Mr. Lewis pled guilty and acknowledged his responsibility in this case, he is entitled to either a two-level or three-level downward adjustment under *Section 3E1.1 of the Guidelines*. In view of the Court's decision to apply a 1-to-1 ratio, the government announced in open court on June 1, 2009 that it would no longer accede to the third point for acceptance of responsibility. [3] Accordingly, after deducting two levels for acceptance of responsibility, Mr. Lewis' adjusted offense level is Offense Level 16. No other adjustments apply in this case. Because Mr. Lewis has 17 criminal history points, he is at Offense Level 16, Criminal History Category VI. The advisory sentencing range for Mr. Lewis therefore is 46 to 57 months. Because there is a congressionally mandated statutory minimum sentence of 120 months, **[*16]** however, that is the minimum sentence the Court lawfully may impose.

3 The Court is not sure how, as a logical matter, the significance of Mr. Lewis' decision to plead guilty several years ago could be changed by the Court's decision to adopt a new sentencing policy. Under *Section 3E1.1 of the Guidelines*, however, the Court may not grant the third point for acceptance of responsibility except upon motion of the government.

Thus, the only remaining question is whether the Court should vary upward from the advisory Guidelines sentencing range because of Mr. Lewis' extensive criminal history. (The government still urges the Court to sentence Mr. Lewis to 162 months incarceration, as the Court did twice before.) As the Court noted at Mr. Lewis' original sentencing on October 14, 2005, and again at his first resentencing on December 21, 2007, Mr. Lewis has had a long career of crime in the District of Columbia; much of it involved drugs, some of it involved guns, and some of it involved domestic violence. See Transcript of Sentencing at 30-31 (Oct. 14, 2005); Transcript of Sentencing at 24-25 (Dec. 21, 2007). The Court also noted on both occasions that Mr. Lewis created for himself the situation **[*17]** he faced at sentencing based on his life of crime over many years. See Transcript of Sentencing at 30 (Oct. 14, 2005); Transcript of Sentencing at 24 (Dec. 21, 2007).

At the original sentencing, the Court asked Mr. Lewis "why I should believe that all of a sudden you are turning your life around when you've had this long career of crime from the age of 18 to the age of 33." Transcript of Sentencing at 30 (Oct. 14, 2005). In the three-and-one-half years since the Court asked that question, however, Mr. Lewis, who is now 37 years old, has indeed demonstrated that he has begun to turn his life around. While incarcerated, he earned his GED and took Spanish language classes to prepare himself to become part of the work force in a multi-lingual community upon his release from prison. He successfully completed a 48-hour drug treatment program and looks forward to the time, two or three years from now, when he will be eligible for the 500-hour residential drug treatment program offered by the Bureau of Prisons. Finally, he completed training to become a counselor for other inmates with respect to depression and suicidal tendencies, and he staffs a suicide hotline in the prison. These are all **[*18]** positive indicators which -- unlike the unsupported statements Mr. Lewis previously made to the Court -tend to show that Mr. Lewis has now taken concrete steps to try to turn his life around. Of course, Mr. Lewis' very significant criminal history has not changed. But Mr. Lewis is older, and he has taken steps which suggest that he is wiser and preparing for a productive and (one has reason to hope) law-abiding return to society.

For all of these reasons, the Court has decided to vary upward but not, as the government requests, to the previously imposed term of 162 months. The Court will instead sentence Mr. Lewis to a period of 130 months in prison, with credit for the time served, to be followed by five years of supervised release with all of the conditions previously set forth in the Amended Judgment and Commitment of December 28, 2007. This sentence is reflected in the Second Amended Judgment and Commitment issued this same day.

SO ORDERED.

/s/

PAUL L. FRIEDMAN

United States District Judge

DATE: June 9, 2009

CASES YOU CAN USE

NLPA CONTINUES A TREND OF EXCELLENCE -A RECAP ON OUR SUCCESSFUL CASES DURING THE FIRST QUARTER OF 2009

Below is out an outline of the victories during the year that we felt deserved an "honorable mention".

Ferguson, J - NLPA was hired directly by counsel in the case of Mr. Ferguson in preparing sentencing research to keep the sentence at the lowest level possible. His case was heard in the U.S. District Court in South Carolina (Spartanburg Division) in Case No. 7:07-cr-00405-1. The PSI recommended 33-41 months with a plea agreement being entered. However, at the sentencing the judge imposed a sentence of 15 months - saving Mr. Ferguson more than a year in prison.

Dennis, D - NLPA assisted counsel for Mr. Dennis in preparing for his sentencing. His case was heard in the U.S. District Court for Maryland (Baltimore Division) in Case No. 1:08-cr-00012-2. The PSI recommendation was 324 to 405 months. However, at the sentencing hearing the court imposed a 204 month sentence - saving Mr. Dennis a whopping **16 YEARS** in prison!

Robertson, A - NLPA assisted counsel in the case of Mr. Robertson which was heard in the State of Maryland court (Case No. 1018). The court agreed to reissue judgment in the case and it was remanded.

Elliott, P - NLPA assisted counsel for Mr. Elliott in addressing sentencing arguments to keep the sentence at the lowest possible level. His case was heard in the U.S. District Court Southern District of Indiana (Indianapolis Division) in Case No. 1:08-cr-00021-1. The PSI in the case recommended a statutory guideline of 120 months. However, at the sentencing hearing the judge imposed a sentence of 72 months - saving Mr. Elliot 4 years in prison.

Stewart, M - NLPA assisted Mr. Stewart's counsel with sentencing arguments in his case which was heard in the U.S. District Court of Connecticut (New Haven Division) in case no. 3:07-CR-00073-4. The PSI Report recommended 151-188 months. However, the sentencing judge imposed a sentence of 120 months - saving Mr. Stewart more than 5 years in prison!

Alexis, T - NLPA assisted Mr. Alexis' counsel with his sentencing arguments in his case. The case was heard in the U.S. District Court for the Northern District of Georgia (Case No. 1:06-CR-00318-2). The PSI Report recommended a sentence of 360 to life. However, the court instead imposed a sentence totaling 260 months - saving Mr. Alexis AT LEAST 10 years in prison!

Killian, G. - NLPA assisted counsel for Mr. Killian at the sentencing in his case (USDC SC, Case No. 0:07-CR-00925-1). The PSI in the case recommended 262-327. However, the judge (in addition to adopting a government motion for downward departure to reduce the guideline level to 168-210 months) also departed further and sentenced the defendant to 140 months and ordered drug treatment (saving him more than 15 YEARS in prison).

Gonzalez, A. - NLPA assisted counsel for Mr. Gonzalez in preparing sentencing research in the case (USDC MD FL, Case No. 3:08-cr-00139-2). The PSI in the case recommended 262-327 months in prison. At sentencing the judge imposed a term of confinement of 200 months - saving Mr. Gonzalez more than 10 YEARS in prison!

Barraza, O. - NLPA assisted Mr. Barraza's counsel in the preparation of sentencing research in his case (USDC MD PA, Case No. 1:07-cr-00064-7). The PSI recommendation in this case was 135-168 months. However, at sentencing the defendant received 108 months - saving Mr. Barraza 5 years in prison!

Tenuto, V - NLPA assisted Robinson & Brandt as counsel for Mr. Tenuto in the preparation of a federal 2255 post-conviction motion. The motion was filed in the USDC ND of IL (Chicago Division) in Case No. 1:06-cr-00484-1. Attorney Brandt advised that the appellate rights of Mr. Tenuto were reinstated after the court granted his motion at the hearing held.

Nuno, M - NLPA assisted counsel for Mr. Nuno in the preparation of partial pretrial research for his case. His case was heard in the State of California, San Bernardino Superior Court (Case No. FWV040158 / HS 11359). The trial court held a hearing and ordered time served for Mr. Nuno! ** This just goes to show that even if a client can't afford to pay our fee in full - some help beats no help!

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- We also can accept credit/debit card payments over the telephone as well as electronic check (check by phone) payments over the telephone.
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Therefore, if you are interested in discussing the financing options available to you for your specific matter, please contact us. NLPA assists in virtually every stage of criminal proceedings from pretrial to post-conviction and also assists in immigration matters. For additional information on the

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