

US Supreme Court rulings give judges more discretion in sentencing

By John Burton
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In two rulings December 10, the Supreme Court gave federal judges additional discretion in sentencing people convicted of federal crimes by allowing them to deviate from the draconian US Sentencing Guidelines. While the result is likely to shorten some prison terms, the United States will no doubt continue to lead the world in the percentage of its population incarcerated.

The most immediate beneficiaries of the rulings are the people charged with or serving sentences for offenses relating to the use, possession or sale of crack cocaine. In *Kimbrough v. United States* the Supreme Court authorized trial judges to disregard entirely the sentencing guidelines, which treat one gram of crack cocaine as equal to 100 grams of powder. This particular provision has been extensively criticized for its racially disparate impact because crack defendants are far more likely to be African-American users and low-level dealers, while high-level traffickers more likely deal in powder.

In response to the ruling, the US Sentencing Commission voted Tuesday to retroactively reduce crack cocaine sentences, potentially shortening the terms of almost 20,000 prisoners—10 percent of all federal inmates. It is expected that some 2,500 people will be freed this March when the new cocaine guideline takes effect.

In the other case, *Gall v. United States*, the defendant was prosecuted for trafficking in the drug ecstasy while a second-year college student. He stopped selling and using drugs three years before his arrest, however, and graduated from the University of Iowa. He is presently employed as a master carpenter in the construction trade. The Supreme Court allowed the trial judge to take into account the defendant's "self-rehabilitation" and disregard the 30-month minimum prison term under the guidelines. Instead, the judge sentenced him

to three years probation.

The federal sentencing guidelines were enacted during the 1980s as a result of right-wing "law-and-order" demagoguery promoted by the Reagan administration and avidly supported by Congressional Democrats. The guidelines, along with stiffer sentencing in the state courts, caused the United States prison population to skyrocket. The total number of inmates more than doubled between 1990 and 2006, despite declining crime rates tied to the general aging of the population and other demographic factors.

Over the last 20 years, police and prosecutors frequently chose federal courts for prosecuting drug crimes to take advantage of the high mandatory sentencing guidelines. Several federal judges resigned their lifetime appointments because of the long sentences they were required to mete out. Others openly criticized the guidelines as inhumane.

The Supreme Court softened the impact of the guidelines three years ago in *Booker v. United States*, a decision that has caused many lower courts to question the extent to which the sentencing guidelines were advisory or mandatory. This week's decisions appear to resolve the matter, making the guidelines advisory only.

Both majority opinions were authored by court moderates, with Associate Justice Ruth Bader Ginsburg writing *Kimbrough* and Associate Justice John Paul Stevens writing *Gall*. The reactionary four-justice bloc had a rare split, with Chief Justice John Roberts and Associate Justice Antonin Scalia joining the majority, while associate justices Clarence Thomas and Joseph Alito dissented.

Although the two rulings suggest that federal prison sentences will become shorter and the prison population smaller, ironically during the three years

following the *Booker* decision the average federal criminal sentence actually increased. The sentencing guidelines work both ways—the additional discretion now available to trial judges authorizes them to hand out sentences longer than those authorized under the guidelines. The fundamental injustice of overly long sentences under federal criminal statutes remains in place.

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By refusing to apply the constitutional ban on “cruel and unusual punishment” to extremely long sentences—for example, the high court upheld a state court sentence of life in prison for a theft committed by someone with two prior felony convictions—the Supreme Court sits atop a criminal justice system which incarcerates about one out of every 100 adults, and one in every nine black males between the ages of 25 and 29.

With the advent of DNA testing, hundreds of prisoners have been found innocent and freed. Studies have revealed that most were convicted based on police and prosecutorial misconduct, including coerced confessions, suggestive eyewitness identifications, phony scientific evidence and the suppression of exculpatory information.

In another recent action, on December 7 the Supreme Court accepted review in two consolidated habeas corpus cases arising from US citizens imprisoned by the US occupation forces in Iraq. In one, a panel of the United States Court of Appeals for the District of Columbia Circuit is blocking the US military from transferring Shawqi Ahmad Omar, who also holds Jordanian citizenship, to Iraqi puppet authorities for a kangaroo trial on purported terrorism charges.

In the other, Mohammad Munaf is accused of participating in the 2005 kidnapping of a group of Romanian journalists, although he too was held captive. While still in US military custody, Munaf was put on trial by an Iraqi court and sentenced to death. If the Supreme Court rules against him, Munaf will be transferred to the Iraqi puppet authorities for execution.

These cases are expected to be calendared for oral argument next March and decided before the current term ends in June.

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