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# Court Restores Sentencing Powers of Federal Judges

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WASHINGTON, Dec. 10 — The [Supreme Court](#) today restored federal judges to their traditional central role in criminal sentencing.

In two decisions, the court said federal district judges have broad discretion to impose what they think are reasonable sentences, even if federal guidelines call for different sentences.

One decision was particularly emphatic in saying judges are free to disagree with guidelines that call for much longer sentences for offenses involving crack cocaine than for crimes involving an equivalent amount of cocaine in powdered form.

Both cases, each decided by the same 7-to-2 alignment, chided federal appeals courts for failing to give district judges sufficient leeway. The appeals court had in each case overturned a sentence that was lower than that provided by the guidelines. The two dissenters were Justices [Clarence Thomas](#) and [Samuel A. Alito Jr.](#)

Taken together, the decisions reflected the remarkable trajectory the court has traveled in the seven years since it overturned a New Jersey hate-crime statute on the ground that the law gave judges an unconstitutional degree of authority to make the crucial factual determinations that added a hate-crime “enhancement” to an ordinary criminal sentence.

Along with their diminished function under the Sentencing Reform Act of 1984, which set up the federal sentencing guidelines system, federal judges appeared to have been all but ejected from their role at the heart of criminal sentencing.

Judges still may not impose sentences above the range written into law by Congress or state legislatures. But the decision on Monday gives judges broad discretion to impose sentences higher or lower than the guidelines, which are not statutes and are issued by the United States Sentencing Commission.

The two decisions answered questions left hanging in 2005, when the court ruled in *United States v. Booker* that the federal sentencing guidelines could be constitutional only if “advisory”

rather than mandatory. Appeals courts were to review sentences for “reasonableness,” the court said then. But the court did not say what it meant by either “advisory” or “reasonableness.”

Last June, in *Rita v. United States*, the court ruled that appeals courts could choose to presume that sentences within the guidelines range were reasonable, but that such a presumption was not binding. But that opinion was quite opaque and said relatively little about the trial judge's role.

It is now clear that while judges should consult the guidelines, they are just one factor among others and do not carry any special weight. It is also clear that an appeals court must have a very good reason of its own to displace the trial judge's judgment.

“The guidelines should be the starting point and the initial benchmark,” Justice [John Paul Stevens](#) said in one of the decisions today, *Gall v. United States*, No. 06-7949.

But Justice Stevens went on to say that the guidelines were just one factor in the “individualized assessment” that a judge must make in every case. The judge “may not presume that the guidelines range is reasonable,” he said.

In that case, Brian M. Gall, who had briefly been involved in an Ecstasy distribution ring while a college student, received a sentence of three years' probation rather than 30 to 36 months in prison called for by the guidelines.

The United States Court of Appeals for the Eighth Circuit, in St. Louis, ruled that such an “extraordinary” variance from the guidelines range required an equivalently extraordinary justification.

That judgment was erroneous, Justice Stevens said, in failing to give “due deference” to the district judge's “reasoned and reasonable decision.” He added that “if the sentence is outside the guidelines range, the court may not apply a presumption of unreasonableness.”

Nor, he continued, should a sentence be overturned just because the appeals court “might reasonably have concluded that a different sentence was appropriate.”

The defendant in the crack cocaine case, Derrick Kimbrough, received 15 years instead of 19 to 22 ½ for several cocaine and gun-related offenses. The sentence was the lowest possible, given the statutory mandatory minimum sentences.

The trial judge said the higher guidelines term would be inappropriate for Mr. Kimbrough, a Marine veteran of the gulf war with an honorable discharge. The judge also disagreed with the relative treatment of crack and powdered cocaine, a disparity that he said led to “disproportionate and unjust” results.

The United States Court of Appeals for the Fourth Circuit, in Richmond, Va., overturned the sentence on the ground that it was “per se unreasonable” for a judge to depart from the guidelines “based on a disagreement with the sentencing disparity for crack and powder cocaine offenses.”

The Supreme Court took the unusual step of reinstating the original lower sentences, rather than simply instructing the appeals courts to reconsider the cases under an appropriately deferential standard of review.

Prof. Douglas A. Berman of [Ohio State University](#)'s Moritz College of Law, an expert on sentencing, called the decisions a “stinging rebuke of circuit court micromanagement of district court discretion.”

The decision in the crack cocaine case, *Kimbrough v. United States*, No. 06-6330, was particularly pointed in this regard. In her majority opinion, Justice [Ruth Bader Ginsburg](#) said that ordinarily, “closer review may be in order” when a judge's sentence is based on a policy disagreement with the guidelines.

But she went on to say that this higher level of appellate scrutiny should not apply to a sentence based on a district judge's critique of the crack-powder disparity.

Justice Ginsburg's opinion took account of an important policy development since the case was argued on Oct. 2. On Nov. 1, amended guidelines for crack cocaine that the United States Sentencing Commission had long advocated took effect when Congress, which had the power to block them, let the moment pass without acting.

Justice Ginsburg said that “this tacit acceptance” of the amendment by Congress “undermines the government's position” that judges should not have discretion to depart from the guidelines themselves.

The amendments put into effect a relatively modest change that will reduce sentences for crack by about one-quarter, resulting in sentences that are two to five times longer than for equivalent amounts of powdered cocaine.

The commission was limited in what it could accomplish on its own. A 1986 federal law, enacted at the height of public concern about crack, incorporated a 100:1 ratio into mandatory minimum sentences — that is, the same sentence was imposed for a given amount of crack and 100 times that amount of powder.

The Sentencing Commission guidelines operated as an overlay on that statutory framework. But as the commission studied the impact, it grew concerned. A 2002 report noted that 85 percent of defendants convicted of crack offenses were black, a fact the commission warned was leading to a loss of confidence in the fairness of the system.

Bipartisan bills are pending in Congress to address the disparity. On Tuesday, the Sentencing Commission will vote on whether to make the Nov. 1 amendment retroactive to the 19,500 inmates imprisoned for crack offenses.

The court's endorsement of judges' discretion raised the prospect that higher sentences, not only lower ones, would now be upheld on appeal.

Current statistics indicate that defendants benefit the most when judges depart from the guidelines. Below-guidelines sentences have been given in 11.9 percent of cases, and above-guidelines sentences in 1.6 percent. Criminal defense lawyers regarded today's decision as good news.

“The court has taken the handcuffs off and told judges that ‘you are free to apply your mind,’” said Graham Boyd, director of the [American Civil Liberties Union](#)'s Drug Law Reform Project.