

U.S. Supreme Court Decides That Judicial Application Of The Federal Sentencing Guidelines Is “Advisory,” And On Appeal, Sentencing Decisions Will Be Reviewed For Unreasonableness.

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On January 12, 2005, the U.S. Supreme Court decided *United States v. Booker*, Nos. 04-104 and 04-105, and dramatically changed the federal sentencing landscape. The Court held that the specific sections of the Sentencing Reform Act of 1984 (“the Act”) requiring federal judges to impose determinate sentences as provided in the Federal Sentencing Guidelines (“the Guidelines”) on criminal defendants were incompatible with defendants’ Sixth Amendment rights. In an unusual two-part majority opinion, the Court modified the Act by striking down these mandatory provisions.

This opinion renders as “advisory” the application of the Guidelines by a sentencing court. As a result, federal judges will likely now have greater discretion in sentencing criminal defendants and the ability to “tailor-fit” sentences to particular defendants even if those sentences fall outside the applicable Guideline ranges. For example, a sentencing judge will likely be allowed to consider facts not presented to a jury such as “the nature and circumstances of the offense and the history and characteristics of the defendant” (as provided under the Act), without being required to apply any specific departure from the sentencing range.

Although the Guidelines are now “advisory,” judges are still required by the remaining provisions of the Act to consider the Guidelines and other sentencing goals (i.e. Sentencing Commission policy statements, the need to avoid unnecessary sentencing disparities, and the need to retribute victims), when sentencing criminal defendants. The Act also continues to require judges to impose sentences that reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, protect the public, and effectively provide the defendant with needed training and medical care. Many judges may continue to routinely sentence defendants within the Guideline sentencing ranges because they are already familiar with the mechanics of the Guidelines and because the scope of appellate review of sentences imposed outside the Guidelines is unclear at this point.

The Court’s opinion struck down a provision of the Act that established standards of appellate review, including a section that allowed for “de novo” review by appellate courts of judges’ decisions to depart from the applicable Guideline ranges in sentencing criminal defendants. The Court held that appellate courts must now review all properly appealed sentencing decisions for “unreasonableness.”

The term “unreasonableness” is not defined by the *Booker* Court, and will likely become the subject of much debate by the federal circuits. It appears clear, however, that the Court imposed this new standard to give greater deference to the decisions of sentencing judges.

The exact effect of the *Booker* Court's decision on the federal sentencing system and the Guidelines awaits interpretation by the federal circuits. However, as Justice Breyer wrote in the second majority opinion, "[o]urs of course is not the last word: The ball lies in Congress' court. The National Legislature is equipped to devise and install, long-term, the sentencing system, compatible with the Constitution, that Congress judges best for the federal system of justice." It remains to be seen whether, and how quickly, Congress will act in the wake of the *Booker* opinion.

What is certain for now is that federal judges have far greater discretion to fashion sentences than they have had for the last 20 years and that sentencing decisions will be reviewed by appellate courts with greater deference.

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