



Court Weighs Revisions in Cocaine-Case Sentences

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 10:43 AM April 19, 2012

The New York Times on April 17, 2012 released the following:

“By ADAM LIPTAK

WASHINGTON — The Supreme Court heard arguments on Tuesday about an aspect of one of the greatest controversies in American criminal law: the differing treatment of crack and powder cocaine. “I’ve been a judge for nearly 20 years,” said Justice Sonia Sotomayor, the only member of the current court who has served as a trial judge, “and I don’t know that there’s one law that has created more controversy or more discussion about its racial impact than this one.”

Crack and powder cocaine are two forms of the same drug. But, until recently, a drug dealer selling crack cocaine was subject to the same sentence as one selling 100 times as much powder.

In 2010, Congress enacted the Fair Sentencing Act, which reduced the disparity to 18 to 1, at least for people who committed their crimes after the law became effective that Aug. 3. That means many defendants caught with small amounts of crack are no longer subject to mandatory 5- or 10-year prison sentences. The question on Tuesday was whether the new, lesser punishments also applied to people who committed crimes before the law became effective but were not sentenced until afterward.

The usual rule, set out in an 1871 law, is that new laws do not apply retroactively unless Congress expressly says so. Here Congress said nothing, or at least nothing in so many words. It did instruct the United States Sentencing Commission to act quickly to revise its discretionary sentencing guidelines to reflect the new ratios.

Early in the argument, several justices suggested that the 1871 law might pose an insurmountable barrier to defendants who

sold cocaine before August 2010.

Congress must have known, Chief Justice John G. Roberts Jr. said, that the 1871 law “required an express statement if they wanted to apply the change retroactively.” “So why shouldn’t we hold them to that standard?” he asked.

As the argument went on, the justices’ attention seemed to turn to a question posed by a lawyer for the two men whose cases were before them.

“Why would Congress want district courts to continue to impose sentences that were universally viewed as unfair and racially discriminatory?” the lawyer, Stephen E. Eberhardt, asked.

Justice Anthony M. Kennedy seemed sympathetic to trial judges called on to sentence defendants under the old law. Many such judges have expressed anger over the issue.

“One of the hardest things is sentencing,” Justice Kennedy said. “And you’re saying that a sentencing judge who knows the law has been changed, who knows the law has been criticized, is nevertheless bound and determined that it’s fair for this person to be sentenced to the longer term.”

The Justice Department had initially supported a strict reading of the 1871 law. It revised its position last July, and a lawyer for the federal government, Michael R. Dreeben, argued in support of leniency on Tuesday.

Under the stricter rule, he said, “there will probably be thousands of crack defendants who will be sentenced under the old mandatory minimums that Congress repealed because they were perceived as being racially disparate and unfair.” He added: “I think everyone in Congress understood that these guidelines had undermined the credibility of the criminal justice system for years.”

Since both the government and the defendants agreed that the recent law may be applied retroactively to those sentenced

after 2010, the Supreme Court appointed Miguel A. Estrada, a prominent Washington lawyer, to argue the other side.

“I think this is a difficult case for public policy,” he told the justices, “but is not a difficult case for legal doctrine.”

He added that if Congress had truly meant to undo a racially discriminatory policy it would not have stopped with defendants not yet sentenced. Many prisoners are serving long sentences under the old law, he said, and yet neither the defendants nor the government have argued for altering those punishments.

Justice Antonin Scalia picked up on the point. “I would find that extraordinary, that they say it’s racist but we are going to leave in effect all of the sentences that have previously been imposed,” he said.

The cases heard Tuesday were *Dorsey v. United States*, No. 11-5683, and *Hill v. United States*, No. 11-5721.”

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Justice Department Announces Agreement with Orange County, New York, to Protect the Rights of Spanish-speaking Puerto Rican Voters

(USDOJ: Justice News)

Submitted at 4:40 PM April 19, 2012

The Justice Department announced a settlement today with Orange County, N.Y., to protect the rights of Spanish-

speaking Puerto Rican voters under Section 4(e) of the Voting Rights Act. Today’s consent decree is intended to resolve concerns that limited-English proficient Puerto Rican voters were being

denied their full voting rights because the county failed to provide bilingual ballots and Spanish-language assistance as required by law.



Virginia Businessman Pleads Guilty to Federal Money Laundering Charge in Investigation of Federal Government Contracts

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:41 AM April 19, 2012

7thspace.com on April 18, 2012 released the following:

“WASHINGTON— James Edward Miller, 64, the owner of a Virginia-based construction management company, pleaded guilty today to a federal charge of conspiracy to commit money laundering in connection with an ongoing investigation into the awarding of millions of dollars of contracts by the United States Army Corps of Engineers.

The plea was announced by United States Attorney for the District of Columbia Ronald C Machen, Jr; James W McJunkin, Assistant Director in Charge of the FBI’s Washington Field Office; Eric Hylton, Acting Special Agent in Charge of the Washington Field Office of the Internal Revenue Service-Criminal Investigation (IRS-CI); Peggy E Gustafson, Inspector General for the Small Business Administration (SBA); Robert E Craig, Special Agent in Charge of the Mid-Atlantic Field Office of the Defense Criminal Investigative Service (DCIS); and Major General David E Quantock, the Commanding General of the United States Army Criminal Investigation Command (CID).

Miller, formerly of Virginia Beach, Virginia, pleaded guilty in the United States District Court for the District of Columbia. A sentencing date has not been set. The charge carries up to 20 years in prison as well as potential fines and an order of restitution. As part of the plea agreement, Miller must forfeit a money judgment of \$4,055,063 and forfeit specific property, including bank account funds, a property in Virginia Beach, three vehicles, diamond rings, and other jewelry.

Miller is the sixth person to plead guilty to charges stemming from an investigation into a scheme that unfolded from 2007 to 2011.

The scheme allegedly involved two former managers for the United States Army Corps of Engineers, various businesses and executives, more than \$20 million in bribes and kickback payments, and the planned steering of a government contract that potentially was worth about \$1 billion.

Miller’s role in the crimes is described in a statement of offense that he signed as part of his plea agreement. Miller was the owner of Big Surf Construction

Management LLC, a company based in Virginia Beach that was involved in residential and commercial construction projects. He was a close friend of another businessman, Harold Babb, the director of contracts at Eyak Technology (EyakTek), a business with an office in Dulles, Virginia.

In 2008, Babb proposed that Miller use Big Surf to obtain government contracts awarded by the United States Army Corps of Engineers. Under the plan, Big Surf would be hired by EyakTek as a subcontractor.

Initially unbeknownst to Miller, Babb was already involved in a conspiracy with, among others, Kerry F Khan, then a program manager for the United States Army Corps of Engineers, and Ananke LLC, a company that was controlled by Khan.

The statement of offense identifies three subcontracts awarded and paid by EyakTek to Big Surf in 2008 and 2009, totaling more than \$8 million. Of this money, Big Surf channeled more than \$3.6 million from the first two subcontracts to Ananke. According to the statement of offense, Babb directed Miller to pay another \$2.9 million, from the third subcontract, to Ananke. However, Miller allegedly reneged on the plan and Big Surf kept the money.

As a result, a fourth intended subcontract, worth about \$1.9 million, was canceled.

In the early stages, according to the statement of offense, Miller believed that Ananke was actually providing services for the money. However, by the time of the second contract, he knew that Ananke was not providing services to EyakTek or the Army Corps of Engineers. He also understood that Babb was using his position at EyakTek to facilitate the award of orders to Big Surf in exchange for payments from Big Surf directly and indirectly to Babb.

Indeed, during the scheme, Miller and Big Surf provided a number of benefits to Babb, including cash payments, an investment in real estate, and money for a Porsche.

Babb, 60, pleaded guilty in March 2012 to federal charges of bribery and unlawful kickbacks. He is awaiting sentencing.

Khan, 54, was indicted in September 2011 on one count of conspiracy to commit bribery and wire fraud and aiding and abetting and causing an illegal act to be done, as well as one count of bribery and one count of conspiracy to commit

money laundering. He pleaded not guilty.

In the overall investigation, to date, the United States has seized for forfeiture or recovered approximately \$7.2 million in bank account funds, cash and repayments, 19 real properties, six luxury cars, and multiple pieces of fine jewelry.

In announcing the plea, United States Attorney Machen, Assistant Director McJunkin, Acting Special Agent in Charge Hylton, Inspector General Gustafson, Special Agent in Charge Craig, and Major General Quantock thanked those who investigated the case from the FBI’s Washington Field Office; the Washington Field Office of IRS-CI; the Office of the Inspector General for the SBA; DCIS; the Defense Contract Audit Agency; and the United States Army CID. They also expressed thanks to the United States Marshals Service for its assistance on the forfeiture matter.

They also praised the efforts of those who worked on the case from the United States Attorney’s Office for the District of Columbia, including Assistant United States Attorneys Michael K Atkinson and Bryan Seeley of the Fraud and Public Corruption Section and Assistant United States Attorney Anthony Saler of the Asset Forfeiture and Money Laundering Section. Finally, they expressed thanks for assistance provided by former Special Assistant United States Attorney Christopher Dana; Forensic Accountant Maria Boodoo; Paralegal Specialists Tasha Harris, Shanna Hays, Taryn McLaughlin, Sarah Reis, Christopher Samson, and Nicole Wattetet and Legal Assistant Krishawn Graham.”

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North Hollywood Man Arrested After Being Indicted Under New Legislation Making it a Crime to Point a Laser at an Aircraft

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 11:38 AM April 19, 2012

The Federal Bureau of Investigation (FBI) on April 18, 2012 released the following:

“LOS ANGELES— A North Hollywood man was taken into custody this morning after being charged in a federal indictment that alleges he pointed the beam of a laser at multiple aircraft, announced Steven Martinez, Assistant Director in Charge of the FBI’s Los Angeles Field Office; and André Birotte, Jr., the United States Attorney in Los Angeles.

Adam Gardenhire, 18, was arrested this morning at his North Hollywood residence without incident. Gardenhire was named in a two-count indictment filed yesterday in United States District Court in Los Angeles that alleges he pointed the beam of a laser at a private plane and a police helicopter.

The federal statute used to charge Gardenhire is part of new legislation recently signed into law by President Obama that makes it a federal crime to deliberately point a laser at an aircraft. The indictment marks the second time a violation of the new statute has been charged in the United States, and the first time one has been charged on the West Coast.

According to the indictment, Gardenhire deliberately aimed a commercial-grade green laser at multiple aircraft on the evening of March 29, 2012. The laser attack was initially reported by a pilot operating a privately owned Cessna Citation. The indictment further alleges that the beam of Gardenhire’s laser was

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pointed at a helicopter operated by a pilot with the Pasadena Police Department who was responding to the report of the laser attack on the Cessna. Air and ground investigators with the Los Angeles Police Department and the Pasadena Police Department identified Gardenhire as a suspect later that evening, and Gardenhire was taken into custody on state charges of pointing a laser at an aircraft. Gardenhire subsequently posted bail and was released from local custody while the joint investigation continued.

Reports of laser attacks have increased dramatically in recent years as laser devices have become more affordable and widely available to the public. In addition, technology has advanced the effectiveness of laser devices, with a resulting increase in the potential safety hazards for pilots operating aircraft and their passengers and crew. Such safety hazards include temporary distraction and impaired vision, which is particularly dangerous during the critical takeoff or landing phase of flight. In addition, pilots have reported the need to abort landings or relinquish control of the aircraft to another pilot as a result of laser attacks. California consistently leads the nation in reports of laser attacks. Over 3,500 laser attacks were reported in 2011.

Gardenhire is scheduled to make an initial appearance before a federal magistrate judge this afternoon in federal court in downtown Los Angeles.

If convicted of both charges in the indictment, Gardenhire faces a statutory maximum penalty of 10 years in federal prison. Gardenhire is also subject to civil penalties by the Federal Aviation Administration.

Justice Department Asks Federal Court to Shut Down Three Philadelphia-area Tax Preparers

(USDOJ: Justice News)

Submitted at 2:36 PM April 19, 2012

The United States has asked a federal court to bar three Philadelphia-area tax preparers from preparing federal tax returns for others, the Justice Department announced today. According to the government complaint in the civil injunction suit, defendants Deron Joe,

This investigation was conducted by the Los Angeles Police Department, the Pasadena Police Department, the Burbank Police Department, the Federal Aviation Administration, and the FBI.

Gardenhire is being prosecuted by the United States Attorney’s Office in the Central District of California. An indictment contains allegations that a defendant has committed a crime. Every defendant is presumed innocent until and unless proven guilty.”

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Edmund Dassin and James Tokpawhiea are Liberian nationals who are legal permanent residents of the United States. The suit alleges that most of the customers of their business, Urban Tax Professionals, are also from Liberia and were referred to the defendants by family or friends.



U.S. Attorney General Holder and Dominican Prosecutor General Jiménez Peña Sign Permanent Agreement to Share Forfeited Assets

(USDOJ: Justice News)

Submitted at 6:44 PM April 19, 2012

Attorney General Eric Holder and Dominican Prosecutor General Radhamés Jiménez Peña met today in Washington, D.C., to sign a permanent agreement to share forfeited assets between the governments of the United States and the Deputy Attorney General James M. Cole Speaks at the Office of Small and Disadvantaged Business Utilization Small Business Procurement Conference

(USDOJ: Justice News)

Submitted at 9:27 AM April 19, 2012

"At the Department of Justice, we know that small businesses are adaptable and innovative. We have come to rely on them to support many of our most important missions, from ensuring the national security to combating violent crime, fighting financial fraud, and protecting those most in need of our help – our children; the elderly; and victims of hate crimes, human trafficking and exploitation," said Deputy Attorney General Cole.

Utah Tax Defier Pleads Guilty in Nine-year Scam to Defraud the United States, Is Sentenced to Two-year Prison Term

(USDOJ: Justice News)

Submitted at 10:36 AM April 19, 2012

Stephen Murphy, a Utah resident, pleaded guilty in federal court in Salt Lake City to one count of conspiracy to defraud the United States, and was sentenced the same day to 24 months in prison, the Justice Department and Internal Revenue Service (IRS) announced today. U.S. District Court Judge Dee Benson presided over the plea hearing and sentencing, which took place yesterday.

Dominican Republic. The permanent sharing agreement acknowledges the consistent forfeiture-related cooperation that United States authorities have received from the Dominican Republic and creates a more efficient process for sharing assets with the Dominican Republic.

Attorney General Eric Holder Speaks at the Memorial Service for Police Chief Michael Maloney

(USDOJ: Justice News)

Submitted at 12:34 PM April 19, 2012

"From the time he walked this gridiron, Michael Maloney was a leader. Shortly after he graduated from high school, he discovered a passion for public service that came to shape his life – and improved so many others. Although he could have chosen an easier path – or a safer one – he wanted to use his skills and many talents to help people and communities in need. He wanted to make a difference. And, by any measure, he succeeded," said Attorney General Holder.

U.S. Pharmaceutical Company Merck Sharp & Dohme Sentenced in Connection with Unlawful Promotion of Vioxx

(USDOJ: Justice News)

Submitted at 1:03 PM April 19, 2012

American pharmaceutical company Merck, Sharp & Dohme was sentenced by U.S. District Court Judge Patti B. Saris in Boston to pay a criminal fine in the amount of \$321,636,000 in connection with its guilty plea related to its promotion and marketing of the painkiller Vioxx (rofecoxib), the Justice Department announced today.

Audit of Gulf Coast Claims Facility Results in \$64 Million in Additional Payments

(USDOJ: Justice News)

Submitted at 5:03 PM April 19, 2012

The Department of Justice today released the executive summary of the report by an independent auditor of the Gulf Coast Claims Facility (GCCF), the facility set up to process claims in the wake of the April 20, 2010, Deepwater Horizon oil spill.

Manhunt for Accused Sex Offender Ends in Chicago

(U.S. Marshals Service News)

Submitted at 7:54 PM April 19, 2012

April 19, 2012 - A nationwide manhunt for accused sex offender James Julius Beaudrie ended this morning with the fugitive's arrest in Chicago, IL. The Great Lakes Regional Fugitive Task Force, a team of law enforcement officers led by U.S. Marshals in Chicago, attempted to locate Beaudrie around 7 a.m. this morning at an apartment complex in Chicago. The location was developed during the course of the U.S. Marshals' investigation in Des Moines as a possible address for Beaudrie's mother.