



January 26, 2005

SUPREME COURT REVERSES LOWER COURT IN SENTENCING GUIDELINE CASE

(Thurston v. United States)

The U.S. Supreme Court summarily reversed a court of appeals decision that sharply limited the trial court from reducing a criminal sentence under the U.S. Sentencing Guidelines. In this case, one business defendant received probation in a plea bargain, but a less culpable executive, originally given a three-month prison term, was ordered by an appellate court to serve a five-year prison term for exercising his right to stand trial for the same offense. The High Court reversed the five-year sentence in light of its ruling last week in *United States v. Booker* that the Guidelines violated the constitutional right to have a jury determine beyond a reasonable doubt all of the factors that were used by a judge in imposing a sentence. On re-sentencing, the trial judge will now have the discretion to reimpose a shorter sentence that it believes is fair and not be strictly bound by the harsh Guidelines.

In *Thurston v. United States*, two executives employed by a medical laboratory testing company were indicted on one conspiracy count for allegedly billing Medicare for certain blood tests for patients which were performed, but were determined to be medically unnecessary. The prosecutors allowed one defendant to plead *nolo contendere* and to receive probation. They offered the same deal to William Thurston who rejected it and elected to exercise his constitutional right to trial. He was found guilty by a jury of the single conspiracy count. Thereafter, the trial court imposed a sentence of three months in prison and two years probation in order to avoid sentencing disparity with the co-defendant who received probation and because of Thurston's extensive charitable work.

The Justice Department appealed Thurston's sentence. While the case was on appeal, and after Thurston completed his term of imprisonment and home detention, Congress enacted the so-called PROTECT Act, otherwise known as the Feeney Amendment. That law sharply reduced the trial court's ability to depart from the Guidelines and provided courts of appeals with *de novo* review authority when reviewing sentencing departures by trial courts. On appeal, the U.S. Court of Appeals for the First Circuit reversed and ordered Thurston to serve five years, the maximum sentence for conspiracy, as dictated by the Guidelines.

In its brief, WLF successfully argued that the courts should be allowed to depart from the draconian sentences dictated by the Guidelines, especially where not to do so, would result in gross disparities of sentences with co-defendants. Congress is expected to respond to the *Booker* decision early this year.

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