

From the Los Angeles Times

Justices OK latitude on sentencing

Two decisions object to narrow federal prison guidelines that have led to disparities, especially in cocaine cases.

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WASHINGTON — The Supreme Court called Monday for a retreat from the strict national sentencing guidelines set during the "war on drugs" of the 1980s, ruling that federal judges may set prison terms well below those recommendations.

Judges should be freer to impose a punishment that fits the criminal and the crime, the justices said in a pair of 7-2 decisions.

FOR THE RECORD:

Sentencing guidelines: A headline on a Section A article in some editions Tuesday misstated the scope of two Supreme Court decisions. It said justices objected to federal sentencing guidelines that had led to disparities in cocaine- and gun-related cases. The objection was to guidelines that applied to cocaine cases. —

The court's call for a return to more individualized sentences will have its greatest impact in drug cases, but it will affect other federal crimes. "This ruling will have enormous impact in a whole host of white-collar cases," said Paul D. Kamenar, counsel for the **Washington Legal Foundation**.

In one case decided Monday, the court upheld probation for Brian Gall, an Arizona man who had admitted selling Ecstasy several years ago when he was in college in Iowa. The sentencing guidelines called for about three years in prison.

In the second case, the justices upheld a 15-year prison term for Derrick Kimbrough, a Gulf War veteran from Norfolk, Va., who was arrested after a gun and crack cocaine were found in his car. The federal recommendations called for a prison sentence of 19 to 22 years.

In both cases, Bush administration lawyers had argued for the longer prison terms and said judges should be required to follow the sentencing guidelines.

The Supreme Court disagreed, with Justices Clarence Thomas and Samuel A. Alito Jr. dissenting.

The court's terse opinions rejected a key tenet of the Sentencing Reform Act of 1984, which sought to bring about consistent punishment for federal crimes, regardless of where they occurred, by taking much judicial latitude.

Sentencing guidelines were supposed to ensure, for example, that a first-time bank robber who carried a gun would receive roughly the same prison term whether he came before a judge in Los Angeles or Louisiana.

The law also set up the U.S. Sentencing Commission, which laid out detailed guidelines that prescribed a narrow range of prison terms for particular offenses. For certain crimes, judges were bound by mandatory minimum sentences but could ratchet them up based on additional factors.

Federal judges chafed at the rules. They said that their hands were tied and that they were sometimes forced to impose harsh and unfair sentences. Over time, their complaints gained traction.

Three years ago, the Supreme Court made clear that the federal sentencing guidelines were merely "advisory." In Monday's rulings, the justices went a step further and said that judges sometimes were free to ignore the sentencing range and to set a much lower prison term when the facts called for it. The term, however, must still meet any established mandatory minimum sentencing law.

"The sentencing judge is in a superior position to find facts and judge their import in an individual case," said Justice John Paul Stevens. His opinion in *Gall vs. United States* was joined by six others, including Justice Stephen G. Breyer, who as a member of the Sentencing Commission from 1985 to 1989 played a central role in writing the guidelines.

It is not clear, however, whether the ruling means judges may impose sentences far higher than the guidelines.

In dissent, Alito faulted the majority for abandoning the guidelines: "It is unrealistic to think this goal [of reducing sentencing disparities] can be achieved over the long term if sentencing judges need only give lip service to the guidelines."

Thomas, also dissenting, said Congress "quite clearly intended" the recommended sentences to be binding on judges.

The impact of Monday's action is somewhat diminished because it does not affect the mandatory minimums set in law. Most crack cocaine defendants, including Kimbrough, must serve long prison terms because of those laws, not because of the sentencing guidelines.

In 1986 -- alarmed by the sudden increase in the use of crack -- Congress applied harsh mandatory minimums to crack-related crimes. As the court's majority opinion noted Monday, legislators apparently believed that crack was highly addictive, that its users were more prone to violence, that it was more harmful to users than powder -- especially to children whose mothers had smoked crack during pregnancy -- and that its low cost and short but intense high made it particularly popular among young people.

Under the law, dealing 5 grams of crack could send a seller to prison for five years -- the same sentence imposed for 500 grams of powder cocaine. At the same time, lawmakers adopted similar mandatory sentences for defendants who carried guns when they sold drugs or committed violent crimes.

Critics of the law have said the mandatory minimums for crack dealers are unduly harsh and racially biased because African Americans are more frequently sentenced for crack offenses. But only Congress -- not the high court -- can repeal those laws. In Kimbrough's case, for example, the judge was required to give the defendant 15 years in prison because he had crack cocaine and a gun.

Now, both the Supreme Court and the U.S. Sentencing Commission have signaled that long prison terms for some crack offenders may be unjustified.

Writing in Kimbrough's case, Justice Ruth Bader Ginsburg noted that "crack and powder cocaine are two forms of the same drug." The sharp disparity in punishment, however, "means that a major supplier of powder cocaine may receive a shorter sentence than a low-level dealer who buys powder from a supplier and then converts it to crack."

Under a rule that took effect Nov. 1, the U.S. Sentencing Commission has reduced the sentencing guidelines for new crack-cocaine cases. Today, the commission will vote on whether those more lenient guidelines should also be applied to more than 19,000 prisoners serving time for crack charges. Making the rule retroactive would reduce their sentences, on average, by about two years; as many as 2,500 could be released within a year.

Monday's rulings were applauded by an array of liberal and conservative groups. "The sentencing guidelines in crack cocaine cases are woefully unfair and dramatically limit the ability of independent judges to do their job," said Virginia Sloan, president of the Constitution Project, a bipartisan group. "The Supreme Court's decision reinvigorates our system of justice with a sense that penalties should be proportionate to crimes."

Mary Price, vice president and general counsel of Families Against Mandatory Minimums, said she was pleased with the rulings.

"At a time when federal crack-cocaine sentencing laws are being scrutinized by the public, the U.S. Sentencing Commission and Congress," Price said, the "rulings upholding the courts' right to exercise sentencing discretion are welcomed."

However, she tempered her enthusiasm by emphasizing that the decisions deal only with penalties based on the sentencing guidelines; thousands of others, she said, still would receive overly severe sentences under federal laws with mandatory minimum penalties attached.

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Times staff writer Henry Weinstein in Los Angeles contributed to this report.

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