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P R O C E E D I N G S
August 1, 2008
2: 00 p. m.
EVIDENTIARY HEARING

THE COURT: Mr. Parker, good afternoon, sir.

I'm Barbara Lynn. I am the judge to whom your motion for re-sentencing in light of the amendment to the Sentencing Guidelines with respect to the crack cocaine, that matter has been assigned to my court, and consequently the purpose for this hearing is for me to hear matters related to that motion that has been filed on your behalf.

Do you understand that?

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THE DEFENDANT: Yes, ma'am.

THE COURT: All right. I have read the papers that have been filed on your behalf.

Have you had an opportunity to speak with your counsel from the Public Defender's Office?

THE DEFENDANT: I spoke to him one time.

THE COURT: Have you had an opportunity to review the materials that have been filed with the Court on your behalf?

THE DEFENDANT: Yes, ma'am.

THE COURT: Now, my understanding is that the government does not object to the Court reducing your sentence by two levels, but the government objects to my

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1 reducing your sentence beyond two levels; is that correct?

2 MR. WILEY: That is correct, your Honor.

3 THE COURT: All right. Let me say, Mr. Parker,
4 that I very much appreciate the fine job that your attorney
5 did in summarizing your history, and I admire what you have
6 done in custody. It's very good what courses you have taken.
7 I think those can only help you. Parenting skills is a very
8 valuable thing to learn, and the language classes that you
9 have taken in public speaking are all very good.

10 I understand you have had a steady job since the latter
11 part of 2006, and your disciplinary record is very good with
12 one exception for being untidy.

13 If I could pass around a disciplinary infraction for
14 being untidy to the lawyers, some of whom are right behind
15 you right now, I would.

14: 18: 08

16 I'm saying it that way, Mr. Parker, because I'm not
17 blowing that one out of proportion. If that's the worst
18 thing anyone can say about your time in custody, that on one
19 occasion you were untidy, you have done pretty well. I
20 wanted to tell you no matter what I do today, I did look at
21 your record and the things that you have accomplished and I
22 commend you for all of that.

23 All right. With that said, I will hear from you,
24 Mr. Page.

25 MR. PAGE: Quickly, your Honor, is it still the

14: 18: 43 1 Court's position that it is prohibited from going below the
2 guidelines?

3 THE COURT: Yes. I will say to you that it is my
4 view, and I am -- I welcome, if you wish, to appeal this. I
5 am of the view that I am prohibited from going below the two
6 levels under the particular guideline adjustment that has
7 been made here. I believe that I am circumscribed as a
8 matter of law and limited to that.

9 I will also tell you that it is my intention here to go
10 to the lowest level of the two levels. So there may not be a
11 whole lot for us to talk about.

12 I would not have wanted to -- I frankly think that in
13 these cases, even where that is what I am doing, I would like
14 to either in person or via videoconferencing where defendants
14: 19: 49 15 are held in a location not close to the courthouse, for
16 Mr. Parker and I to see each other, for me to get a look at
17 him, hear from him anything that he wants to say, but subject
18 to that I do want to hear from Mr. Parker. That is my
19 intention.

20 The adjustments that are demonstrated by the amendment
21 still do not eliminate the disparity between how crack and
22 powder cocaine are treated. I am mindful of your bad math
23 section, and your brief which has a ring of similarity to
24 other briefs I have seen before.

25 MR. PAGE: Yes, ma'am, as do the cases.

14: 20: 36

1 THE COURT: Yes. In light of that, I'm not saying
2 that I will always go to the bottom of the two, but that is,
3 in my mind, a default position, because I am not, by what I
4 think I can do, eliminating that difference in treatment and
5 disparity in treatment, but only addressing it to the extent
6 the law permits, and I think the law permits only that I go
7 two levels.

8 MR. PAGE: I appreciate the Court's transparency.
9 Please note our respectful objection to that legal situation.

10 THE COURT: I would be delighted if you would
11 appeal and reverse me.

12 MR. PAGE: Thank you, your Honor.

14: 21: 22

13 THE COURT: That may be the only time I'll actually
14 say that, but either that I am delighted that you will
15 appeal, and particularly that I would be delighted to have
16 you reverse me. You may have a one-time only statement
17 there, but you have it.

18 MR. PAGE: Thank you, your Honor. I mean, given
19 the Court's position about its intention to sentence at the
20 bottom of the guidelines, unless something else emerges,
21 you're right, there isn't a lot for me to say, but just
22 quickly put on the record that consideration to support a
23 lower sentence in this case include Mr. Parker's disciplinary
24 record, or lack thereof, his progress in prison, the fact
25 that he was a young man when he was convicted, and then the

14: 21: 59 1 Commission's sort of irrational math in adjusting the way
2 that offense levels correlate with the crack powder ratio of
3 different quantities. Thank you.

4 THE COURT: All right. Mr. Parker, I am very happy
5 to hear from you on any matter that you wish.

6 As I have said, and let me say again, I am of the view
7 that -- I'm not saying what my reduction in your sentence
8 would be if I had discretion. If the Fifth Circuit were to
9 determine that I have discretion to go below two levels, then
10 I think it's fairly certain, and in fact I would ask them to
11 remand this case to me to look again, because I'm not going
12 to now engage in a theoretical exercise, what would I do if I
13 could do something that I can't do, but if I had that
14 discretion, I would exercise it. But today in this context
15 there is not much point to you asking me to go below 108,
16 because I don't think I can.

17 THE DEFENDANT: Thank you.

18 THE COURT: All right. I still would like to hear
19 a little bit from you, Mr. Parker. If you would tell me a
20 little bit of sort of how you see things now. The impact of
21 the time that you have served. What you -- how you see your
22 life unfolding when you are released, and that kind of thing,
23 because I'm looking, you know, for me to do the maximum I can
24 do, which is what I would like to do in your case, I would
25 like to know that it's appropriate for me to do that. So I

14: 23: 42 1 would like to know a little bit more about you than what I
2 can read on the page.

3 THE DEFENDANT: Well, your Honor, I want to also
4 say that just this past April I got my GED too. Right now
5 I'm in an AGHC class getting my AGHC license. As soon as I
6 finish with that, I be in a real estate class. So I been
7 furthering my education.

8 I done made a complete change in my personality, and the
9 way -- my outlook on things. I done gave my life to God.
10 When I was in Beaumont, Texas I got baptized. So I done done
11 a turnaround. I done changed -- I took responsibility for my
12 actions in the past.

13 THE COURT: All right. Mr. Parker, thank you. I
14 didn't mean to cut you off. Were you finished?

14: 24: 32 15 THE DEFENDANT: (Nodding head up and down.)

16 THE COURT: Well, Mr. Parker, that is all very
17 good, and I commend you on that. It's interesting that with
18 one exception, we sentence defendants, and then the only time
19 we ever hear from them again is when they do something bad.

20 I have one defendant who corresponds with me with some
21 regularity and tells me what he's doing and how he's doing,
22 so I know how he's doing. But with that exception I don't
23 ever hear anything about how anyone is doing until they come
24 here with something bad about to happen to them except in the
25 context of what we're doing now.

14: 25: 15 1 So I just want to say to you that I am mindful of the
2 fact that your circumstances are difficult, not that you
3 don't deserve to be there, but nevertheless your
4 circumstances are difficult and it would be very easy to just
5 mark the days and do nothing meaningful with the time there.
6 You're not doing that. To the contrary. I'm proud of you
7 for all of that.

8 THE DEFENDANT: Thank you.

9 THE COURT: Anything further from the government?

10 MR. WILEY: No, your Honor. Given the government's
11 discourse regarding the ability to or not to go below the
12 two-level departure, or downward level, we have nothing
13 further.

14 THE COURT: All right. Then it is the Court's
14: 25: 55 15 intention and decision to reduce Mr. Parker's sentence by
16 sentencing him to the lowest end of the amended guideline
17 range. The guideline range was originally 32. It is now 30.
18 So the Court, rather than the 135 months sentence originally
19 imposed, the Court reduces Mr. Parker's sentence to 108
20 months.

21 Again, it is Mr. Parker's decision to appeal from this
22 ruling, the Court again stating that I believe I am legally
23 prevented from going below that level, if the Fifth Circuit
24 or the Supreme Court determines that I can, then I will
25 certainly consider doing so, and would appreciate having the

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case remanded for that purpose.

All right. With that said, Mr. Parker, I wish you good luck. I hope you continue to progress as you have.

Occasionally I come over and have a little tour at the facility where you are now, and if you see me there, you should feel free to say hello.

THE DEFENDANT: Thank you.

THE COURT: Good luck to you, Mr. Parker.

Thank you, Mr. Page.

MR. WILEY: May I be excused, your Honor.

THE COURT: Yes. Thank you, Mr. Wiley.

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C E R T I F I C A T E:

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I, P. Sue Engledow RPR/CSR, certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

This the 25th day of August, 2008.

/S/P. Sue Engledow

P. SUE ENGLE DOW RPR/CSR No. 1170
Official Court Reporter
The Northern District of Texas
Dallas Division