

Booker/Blakely Update

By: Brett A. Purtzer and Lance Hester; Jan 2005

The U.S. Supreme Court recently issued its long-awaited opinion in United States v. Booker. In short, it holds as follows: The U.S. Sentencing Guidelines violate the Sixth Amendment to the extent that they allow judicial fact-finding rather than jury fact-finding for sentencing. Additionally, the court added to its holding that The Sentencing Guidelines survive, but only as "advisory" rules for federal judges. It also allows appeals courts to strike down "unreasonable" sentences - but fails to make clear what "unreasonable" means. Booker ultimately invites Congress to frame a better remedy than this for the constitutional violation.

As most expected, the U.S. Supreme Court's decision in Blakely v. Washington had an impact in state and federal courts around the country. This past summer, the Ninth Circuit Court of Appeals decided United States v. Ameline, 376 F.3d 967 (2004), which dealt with the Blakely application to the federal sentencing guidelines.

As you recall, Blakely refined Apprendi and held that sentence guidelines establish the maximum sentence a judge may impose based on facts reflected in a jury's verdict or admitted by defendant.

In Ameline, the defendant entered a guilty plea, but his plea agreement did not contain an agreement as to the quantity of methamphetamine to be used for sentencing purposes. At sentencing, the government's offer-of-proof was that the defendant had distributed one-and-a-half kilograms of methamphetamine, which amount Ameline disputed. A presentence report was also prepared attributing over one thousand grams of methamphetamine to Ameline for sentencing purposes. Based on the presentence report and the court's independent finding after an evidentiary hearing, the court held that Ameline had distributed in excess of one thousand grams of methamphetamine, and determined that Ameline's sentence was 150 months imprisonment. The court noted its findings were by a preponderance of the evidence as opposed to proof beyond a reasonable doubt.

In reversing the district court's sentence and remanding it for resentencing, the Ameline court held that Blakely applies to the sentencing guidelines and that it was clear error for the court to have increased Ameline's punishment based on facts that were not admitted by him or determined by a jury beyond a reasonable doubt. As such, the sentence was improper.

For a time, the significance of Ameline was that it applied Blakely, a U.S. Supreme Court case, to the federal sentencing guidelines. Blakely referenced the Washington State Sentencing Guidelines, but found that they were similar to the federal guidelines. As such, based upon Blakely and Ameline, all sentences needed to be based upon the facts appropriately pled and proved at trial or admitted to by the defendant before a sentence could be determined, and that the sentencing guidelines, whether state or federal, established the maximum sentence the court can impose.

On one hand, Booker now appears to allow federal judges to find by a preponderance those factors that will “guide” their sentencing should they choose to utilize the U.S. Sentencing Guidelines. The very recent post-Booker sentencing results seem to be varied with some judges sentencing defendants well below the range that otherwise would have been determined by their sentencing levels. Many attorneys have concluded Booker will mean the end of 5K 1.1 provisions that Federal Prosecutors sometimes file in order to justify a court sentencing below a Guideline score.

End

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