

63-year pot sentence puts focus on mandatory sentences

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By Adam Liptak
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Weldon H. Angelos, a 25-year-old producer of rap records, will be sentenced Tuesday in federal court in Salt Lake City for selling several hundred dollars in marijuana on each of three occasions, his first offenses. He faces 63 years in prison.

Laws that set mandatory minimum sentences require 55 of the 63 years because Angelos carried a gun while he sold the drugs.

"It would appear effectively to be a life sentence," the judge, Paul G. Cassell of U.S. District Court there, wrote in a request to the prosecution and the defense for advice about whether he has any choice but to send the man to prison forever.

Cassell, a brainy, conservative former law professor, surveyed the maximum sentences for other federal crimes. Hijacking an airplane: 25 years. Terrorist bombing intending to kill a bystander: 20 years. Second-degree murder: 14 years. Kidnapping: 13 years. Rape of a 10-year-old: 11 years.

He noted that Angelos would face a far shorter sentence in the courts of any state. In Utah, prosecutors estimate that he would receive five to seven years.

Many implications

The Angelos case may provide a glimpse of the future. The constitutionality of federal sentencing guidelines was called into doubt by a Supreme Court decision in June, but that thinking does not extend to laws that set mandatory minimum sentences.

If the court strikes down the guidelines this fall, judges will have much greater discretion, to the dismay of many prosecutors and politicians who worry that judges are not tough enough on crime. Congress may respond with even more mandatory minimums.

Sentencing guidelines are set by the U.S. Sentencing Commission, an agency of the judicial branch. The guidelines were intended to limit judges' discretion without locking them into one-size-fits-all sentences. Mandatory minimums, in contrast, are enacted by Congress and become part of the code.

"The guidelines always have some sort of escape," said Jeffrey B. Sklaroff of the New York office of Greenberg Traurig, a law firm that represents 29 former judges and prosecutors who filed a brief in support of Angelos in July. "A mandatory minimum means what it says: It is mandatory, and it is a minimum."

In Angelos' case, the drug offenses and related money-laundering convictions, for using drug money to buy a car and pay his rent, could subject him to eight years in prison. The mandatory minimums are for the additional offense of carrying a gun while selling drugs. Angelos carried a Glock pistol in an ankle holster when he sold marijuana on two occasions, though he did not brandish or use it. More guns were found in a briefcase and a safe at his home.

Up to Supreme Court

According to the indictment, some of the guns were stolen, though Angelos was not accused of being the thief. Cassell is required to add five years for the gun in the first deal and 25 years each for the second deal and the guns found at his home.

The Supreme Court will decide whether to strike down the sentencing guidelines after it hears arguments in October, and some legislators are already signaling their preference for more mandatory minimums if the guidelines are deemed unconstitutional.

At a hearing in July on legislation that would increase drug sentences, Rep. Howard Coble, R-N.C., said, "It seems clear that mandatory minimums may well take on added importance in assuring appropriate sentences for serious federal crimes as a result of the Supreme Court's actions."

Ronald H. Weich, a former counsel to the Senate Judiciary Committee who opposes mandatory minimums, said they had a political constituency. "There is a real danger," Weich said, "that we're heading back to mandatory minimums if guidelines are unconstitutional."

The Justice Department supports mandatory minimums, said Monica Goodling, a spokeswoman.

"Tough but fair mandatory minimum sentences take habitual lawbreakers off the streets, lock up the most dangerous criminals and help ensure the safety of law-abiding Americans," Goodling said. "Since these common-sense policies were created, we've seen crime plummet to a 30-year low. The public, the Congress and presidents of both parties have supported mandatory minimums for a simple reason: they work."

In June, just days after the Supreme Court's decision in *Blakely v. Washington*, which struck down the sentencing system of Washington state, Cassell was the first judge to say the logic of the decision required the voiding of the federal sentencing guidelines as well. In the Angelos case, he wrote that he took "no joy" in the "potentially cataclysmic

implications" of that reasoning.

In *Blakely*, the Supreme Court held that all facts that could lead to longer sentences must be found by a jury. But the Washington law, like the federal guidelines, let judges make some such findings.

"There has not been a single case in the history of American criminal law with the immediate impact of this one," Frank O. Bowman, an Indiana University expert, said of *Blakely*. "The United States Supreme Court has essentially shut down the criminal justice system or at least put it in a state of suspended animation." Whatever the court decides about how *Blakely* applies to federal guidelines, cases like *Angelos*' will not be affected, for two reasons: A jury did find the facts about the guns he possessed, and another Supreme Court case says judges may find the facts supporting minimum sentences.

"Cruel and unusual"

Angelos' lawyers and the 29 former judges and prosecutors argue that the mandatory sentence in his case amounts to a cruel and unusual punishment prohibited by the Eighth Amendment. The Supreme Court has not been receptive to similar arguments in cases involving three-strikes laws and a first-time offender given life without parole for large-scale cocaine distribution.

However, Cassell has drawn a distinction between the guidelines and mandatory minimums. In a *Stanford Law Review* article in April, he wrote that "the federal sentencing guidelines, while tough, are not 'too' tough." But mandatory minimums, he wrote, "can lead to possible injustices."