

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Criminal No. 01-0425 (PLF)
TYRONE J. WEAKS,)	
)	
Defendant.)	
_____)	

MEMORANDUM OPINION AND ORDER

The Court of Appeals remanded the record in this case for further proceedings in light of United States v. Coles, 403 F.3d 764 (D.C. Cir. 2005). Under Coles, such a remand is for the limited purpose of permitting the District Court to determine whether it would have imposed “a different sentence, materially more favorable to the defendant, had it been aware of the post-Booker sentencing regime.” Id. at 771. See Booker v. United States, 543 U.S. 220 (2005). Accordingly, on October 3, 2005, this Court ordered counsel for the parties to submit briefs setting forth their respective positions on resentencing. The government filed its memorandum in aid of sentencing evaluation on November 9, 2005 but, because of some confusion as to which defense counsel currently represents the defendant, the Court did not receive the defendant’s memorandum in aid of sentencing post-Booker until May 22, 2006.

The Court has reviewed the file in this case, including the transcript of the plea proceedings before Judge William B. Bryant, the Presentence Investigation Report, the Judgment and Commitment, and the Court’s Statement of Reasons. Because the Guidelines were

mandatory at the time of the original sentencing and because the defendant acknowledged at the time of his plea that he possessed 56.9 grams of cocaine base, also known as crack cocaine, and also possessed a gun in connection with his drug trafficking offense, the Guidelines required the Court to sentence him (in view of the amount of cocaine base possessed) to a minimum of 121 months.¹

After extensive briefing by the United States and the Federal Public Defender in other cases with respect to the Court's discretion to apply a crack cocaine/powder cocaine ratio of less than 100 to 1 after the Supreme Court made the Guidelines advisory in Booker, this Court has on numerous occasions concluded that a 20 to 1 ratio is available to the Court post-Booker and is appropriate in many cases under the factors set out in 18 U.S.C. § 3553 (a). See, e.g., United States v. Harris, Criminal No. 03-0539, and United States v. Brown, Criminal No. 04-0385, Sentencing Transcript of March 7, 2006. Accordingly, this Court would have imposed "a different sentence, materially more favorable to the defendant had it been aware of the post-Booker sentencing regime." United States v. Coles, 403 F.3d at 771. Accordingly, the Court requests that the Court of Appeals remand the record in this case for further proceedings in light of Brady and Coles, and it is hereby

ORDERED that this case is scheduled for resentencing on August 29, 2006 at 10:00 a.m.; and it is

¹ The Guideline sentencing range as calculated by the Probation Office was 151 to 188 months because the defendant was at Offense Level 32, Criminal History Category III. But the Court found that the defendant was entitled to a two-level downward adjustment for his acceptance of responsibility under Section 3E1.1 of the Guidelines, putting him at Offense Level 30, Criminal History Category III. Thus, his sentencing range was 121 to 151 months.

FURTHER ORDERED that the United States shall issue an appropriate writ to assure the presence of the defendant at the resentencing.

SO ORDERED.

DATE: July 6, 2006

/s/ _____
PAUL L. FRIEDMAN
United States District Judge