

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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2			
3	UNITED STATES OF AMERICA,)	
)	
4	Plaintiff,)	8:92CR12
)	
5	vs.)	
)	Omaha, Nebraska
6	HAMEDAH A. HASAN,)	June 19, 2009
)	
7	Defendant.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURIE SMITH CAMP
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

12		
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Proceedings recorded by mechanical stenography,
transcript produced with computer.

1 (At 1:06 p.m. on June 19, 2009, with counsel for the
2 parties present, the following proceedings were had:)

3 THE COURT: We are here in the matter of the United
4 States versus Hamedah Ali Hasan, Case Number 8:92CR12.

5 And do we have the defendant with us by telephone today?

6 MR. HANSEN: No, your Honor.

7 THE COURT: All right.

8 Will counsel please enter their appearances.

9 MS. MORAN: Good afternoon, your Honor; Maria Moran
10 representing the plaintiff.

11 THE COURT: Good afternoon.

12 MR. HANSEN: Michael Hansen for Ms. Hasan, your
13 Honor.

14 THE COURT: Good afternoon to both of you.

15 The matter before the Court is the defendant's motion to
16 reduce sentence. And the motion appears at filing 744. It
17 was accompanied by a brief at filing 745. And I have reviewed
18 both, and I appreciate the information that you set forth in
19 the brief.

20 It's a motion to reduce sentence pursuant to the new
21 crack cocaine guidelines.

22 It's fair to say that this is a somewhat unusual case;
23 the history of the case is unusual. I think in the best
24 interests of the use of everyone's time, it might be helpful
25 if I give some background about how I view the case and then

1 hear argument from both of the lawyers.

2 The motion and the brief in support of the motion were
3 filed back in May of 2008, so that was more than a year ago.
4 And we have some case law that's come down from the Eighth
5 Circuit in the time since then. Probably the most recent case
6 that deals with very similar issues is *United States versus*
7 *Starks*. That appears at 551 F.3d 839.

8 I will say that the situation of this defendant,
9 Ms. Hasan, who is formerly known as Stephanie Lomax, is a
10 little bit different than the situation involving Mr. Starks,
11 and I'll explain why I think her situation is a little bit
12 different.

13 I'm going to refer directly to this *Starks* opinion
14 because I think I am bound by it. I think I need to follow
15 this opinion. I recognize that there are circuit court
16 opinions elsewhere in the country that take a different
17 position, but I'm obligated to follow the holdings of the
18 Eighth Circuit.

19 At page 841 of the *Starks* decision, the Eighth Circuit
20 includes the following language. And I'm just going to go
21 ahead and read the paragraph and then tell you the specific
22 part that I think is significant and why it distinguishes
23 Ms. Hasan's situation from that of Mr. Starks. And I'm
24 quoting now from the Eighth Circuit opinion:

25 "Section 3582(c) of Title 18 provides that 'in the case

1 of a defendant who has been sentenced to a term of
2 imprisonment based on a sentencing range that has subsequently
3 been lowered by the Sentencing Commission pursuant to 28
4 U.S.C. 994(o), the court may reduce the term of imprisonment,
5 after considering the factors set forth in Section 3553(a) to
6 the extent they are applicable, if such a reduction is
7 consistent with applicable policy statements issued by the
8 Sentencing Commission.'"

9 That ends the internal quote, but I'm still quoting from
10 the *Starks* decision.

11 "18 U.S.C. Section 3582(c)(2). The policy statement
12 applicable to sentence reductions based on retroactive
13 amendments by the Sentencing Commission is USSG 1B1.10. That
14 statement authorizes a reduction in sentence based on
15 Amendment 706.

16 "It further provides, however, that in the case of a
17 defendant who was sentenced under the mandatory sentencing
18 guidelines prior to *Booker* and within the applicable guideline
19 range, 'the court shall not reduce the defendant's term of
20 imprisonment under 18 U.S.C. Section 3582(c)(2) and this
21 policy statement to a term that is less than the minimum of
22 the amended guideline range,' -- end of internal quote --
23 "USSG Section 1B1.10(b)(2)(A), i.e., the guideline range that
24 would have been applicable to the defendant if the amendment
25 to the guideline had been in effect at the time the defendant

1 was sentenced."

2 Turning a little later in the opinion -- well, near the
3 end of the opinion, starting at page 842, again the Eighth
4 Circuit refers to "applicable policy statements issued by the
5 Sentencing Commission in connection with the crack cocaine
6 guideline amendments."

7 And at page 843, the Eighth Circuit notes that those
8 applicable policy statements issued by the Sentencing
9 Commission include a statement, and I'm quoting now again,
10 "which directs that the court must not reduce the sentence of
11 a defendant who was originally sentenced within the applicable
12 guideline range to a term that is less than the minimum of the
13 amended guideline range." Now I'm done quoting from that
14 opinion.

15 And I'll tell you what I'm picking up from that opinion
16 is I would be completely without authority to go below the
17 newly calculated guideline range but for the fact that this
18 defendant, Ms. Hasan, was not sentenced by Judge Kopf within
19 the guideline range. She was sentenced by Judge Kopf on March
20 12 of 1999, after he had considered all of the statutory
21 factors, including her post-offense rehabilitation, to a term
22 well below the guideline range.

23 He sentenced her to a term of 144 months as to Counts I,
24 IV, V, VI, VII and VIII, and 60 months on Count IX and 48
25 months on Count X, concurrent, and then five years on Counts

1 I, IV, V, VII, etc. Basically he gave her a 144-month
2 sentence. That was her sentence in the pre-Booker era.

3 Now, I recognize others might say, "Well, that wasn't her
4 final sentence because even though this sentence was affirmed
5 by a panel of the Eighth Circuit, it was reheard by an en banc
6 panel and the en banc did reverse and remand for resentencing
7 based upon a rationale that would be completely invalid
8 today."

9 Now, I don't doubt that I could resentence this
10 defendant, Ms. Hasan, to a term that is within the
11 recalculated guideline range, a term of 324 months to 405
12 months, and that that would be a valid sentence. And I don't
13 think that she would be able to challenge that sentence
14 successfully.

15 I don't think that would be a just sentence. I don't
16 think that would be a fair sentence.

17 Judge Kopf considered the statutory factors when he
18 sentenced her. And certainly if he were to be imposing that
19 sentence today, that sentence would hold up and be completely
20 valid and acceptable.

21 And in giving the file my own independent review, I think
22 the sentence that was imposed by Judge Kopf in the pre-Booker
23 era, considering the statutory factors, was a fair and a
24 reasonable sentence.

25 This was a defendant who had no criminal history. This

1 was a defendant who was on pretrial release for many months
2 before she was ultimately sentenced in this case, and she had
3 no difficulty on pretrial release.

4 And Judge Kopf considered her post-offense rehabilitation
5 when imposing the sentence of 144 months. Post-offense
6 rehabilitation is something that I consider to be important.
7 And I've noted that on our Court's Web site where I've put
8 down my philosophy of sentencing in an outline of what I
9 consider, what I think is important and what I don't think is
10 important. And I think efforts at post-offense rehabilitation
11 and success at post-offense rehabilitation is one of the most
12 important things to be considered.

13 So, I'm telling you why I think Ms. Hasan's situation,
14 from a factual and legal standpoint, is different from
15 Mr. Starks' situation, and why I think that I may sentence
16 lawfully below the guideline range of 324 months to 405
17 months. And it is my inclination to do that.

18 I'll note also I do not believe that Ms. Hasan is
19 entitled to an evidentiary hearing in this case. This is not
20 a full-blown resentencing. And I have not granted requests
21 for evidentiary hearings in other resentencings under the
22 crack cocaine guidelines, and I don't intend to do that in
23 this case.

24 Referring back to *Starks* for just a moment before I quit
25 talking, I am required to do a two-step determination. I'm

1 supposed to determine what sentence I would have imposed had
2 the new sentencing guideline range been the range at the time
3 of the sentencing.

4 And I'm supposed to decide whether the defendant --
5 whether to give the defendant the benefit of that particular
6 reduced sentence considering the facts before the court at the
7 time of resentencing in light of the factors set forth in 18
8 U.S.C. Section 3553(a). And here I'm referring to page 841 of
9 *Starks*.

10 So I'm going to be quiet now, and I'm going to give both
11 of the lawyers a chance to talk. And I guess I should inquire
12 though if you received the retroactive sentencing worksheet
13 that was prepared by the probation office in anticipation of
14 this hearing.

15 Ms. Moran, did you get that?

16 MS. MORAN: I did, your Honor.

17 THE COURT: All right.

18 And Mr. Hansen, did you receive that?

19 MR. HANSEN: Yes, your Honor.

20 THE COURT: Okay. And as I noted, it indicates a
21 retroactive guideline under the crack cocaine amendments of
22 324 months to 405 months.

23 Since this is Mr. Hansen's motion I think I should give
24 him a chance to talk first, so, Mr. Hansen.

25 MR. HANSEN: Thank you, your Honor.

1 Pardon me, if I'm a little stunned. I didn't see this
2 coming. I didn't see your reasoning ahead of time. And
3 that's no disrespect to you, I just didn't see that. So I'm a
4 little floored right now.

5 But, what I would like the Court to do as well, if you
6 read *Starks*, the one thing that is very loud in its absence is
7 any reference to *Kimbrough*. And I know *Spears* wasn't
8 entered -- wasn't issued by the Supreme Court at the time
9 *Starks* came down.

10 But I would like the Court to address some of the -- also
11 just to cover the bases. The argument that I've made in the
12 petition, the 3582(c)(2) petition, is that we get to the same
13 point that I think the Court is by articulating that the Court
14 can look at the guidelines as amended and say, they drew the
15 line, the ceiling, and established that ratio at 33 to 1 when
16 there are other ratios within the guideline range of the
17 disparity of crack and powder of less than that.

18 And where I'm at is that if the Court would say, well,
19 one of the ratios, as even announced by the Supreme Court, is
20 a 25-to-1 ratio. If you substitute the 25-to-1 ratio at the
21 top, the cutoff then between a level 38 and a 36 would be six
22 kilograms of crack cocaine. The relevant conduct in this case
23 is 5.9 kilograms of crack cocaine.

24 So I would like the Court to address that issue
25 potentially as well because I think if -- if the Eighth

1 Circuit doesn't agree with you, Judge, at least we may have
2 something else to fall back on because I don't believe the
3 Eighth Circuit has addressed the authority that the district
4 court has in light of *Kimbrough* and *Spears* to substitute your
5 own belief as to what a correct ratio should be versus the
6 ratio that's been articulated by the guidelines.

7 So, to cover all the bases, should the government decide
8 to appeal your decision in this case, if you would articulate
9 on the record what your belief the ratio of crack to powder
10 should be at near the top end of the guidelines as they've
11 been amended.

12 I believe also by the time this is litigated, that all
13 may change again. But I just want the record to be clear as
14 possible so if the government does appeal this, there are many
15 issues for the Eighth Circuit to look at.

16 And I don't disagree with any of the things you
17 articulated previously. I'm just bringing an issue in my
18 argument to light that I briefed.

19 THE COURT: Well, and I appreciate your invitation to
20 me asking me to address that issue and express a position on
21 that issue. And I'm not sure that it's necessary for me to do
22 that to reach the decision that I believe should be reached in
23 this case. So I may decline your invitation.

24 I'll hear from Ms. Moran now.

25 MS. MORAN: Your Honor, I still believe that based on

1 the amount of crack cocaine that was involved in this, the
2 over 4.5 kilograms, that the Court does not have authority to
3 reduce that sentence because that guideline range, even
4 reduced to level 38, does not change in her situation.

5 She still is a level 38. She still is being sentenced
6 based on a range that has not been lowered by the Sentencing
7 Commission, which is still a 38.

8 And I still believe under *Starks* and the cases that have
9 followed, *Chucky Wanton*, that because of that finding on
10 quantity which has never changed from the initial sentence all
11 the way through the resentencing and the appeal of that sentence
12 and then that resentencing, that that restricts the Court from
13 being able to sentence below what she's currently sentenced
14 to.

15 THE COURT: All right. Thank you, Ms. Moran.

16 Well, I'm going to decline to address the issue that
17 Mr. Hansen has asked me to address. And if I were to address
18 that, Mr. Hansen, I might be giving you a decision that would
19 be unfavorable. But I don't think it's necessary for me to
20 address that particular issue.

21 The defendant in this case was originally sentenced
22 before *Booker*, but she was not sentenced within the applicable
23 guideline range. She was sentenced below the guideline range
24 by Judge Kopf on March 12 of 1999. And he gave an extensive
25 rationale for sentencing her at the 144-month level.

1 I agree with his rationale. I find that his sentence
2 that was imposed pre-Booker outside the guideline range was a
3 reasonable sentence, considering all of the statutory factors,
4 including her efforts at post-offense rehabilitation and her
5 lack of prior criminal history.

6 Because the policy statement of the Sentencing Guideline
7 Commission that would restrict me to the new guideline range
8 only applies in the event that the defendant was originally
9 sentenced within the guideline range, I do not believe that I
10 am restricted by that policy statement or by the Eighth
11 Circuit decision in *Starks* to a sentence that is within the
12 guideline range.

13 And I specifically find that a sentence within that
14 guideline range of 324 months to 405 months would be
15 unreasonable and excessive for this defendant, considering all
16 the statutory factors.

17 Accordingly, I impose a sentence of 144 months'
18 incarceration as to Counts I, IV, V, VI, VII and VIII; 60
19 months on Count IX, concurrent with the terms on Counts I, IV,
20 V, VI, VII and VIII, and 48 months on Count X of the
21 superseding indictment, concurrent with the terms imposed on
22 Counts I, IV, V, VI, VII, VIII and IX.

23 I impose a term of supervised release of five years on
24 Counts I, IV, V, and VII, and three years on Counts VI, VIII
25 and IX, again concurrent with the terms imposed on Counts I,

1 IV, V and VII, and one year of supervised release on Count X
2 to be served concurrent with the terms on Counts I, IV, V,
3 VII, VI, VIII and IX.

4 The special assessments will total \$400.

5 And it is my intention to issue a judgment and commitment
6 order that is consistent with the judgment and commitment
7 order that was entered by Judge Kopf on March 12 of 1999.

8 Is there anything else that we need to address today,
9 Ms. Moran?

10 MS. MORAN: No, your Honor.

11 THE COURT: Anything else, Mr. Hansen?

12 MR. HANSEN: No, your Honor.

13 THE COURT: All right. Thank you.

14 We're adjourned.

15

16 (Adjourned at 1:28 p.m.)

17

18

19

20 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

21

22 /s Brenda L. Fauber
23 Brenda L. Fauber, RDR, CRR

6-24-09

Date

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25