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Federal Judge Blasts Mandatory Minimum Sentences

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Forced to impose a sentence he deemed unjust, a Northern District of New York judge took sharp aim last week at a federal statute that required him to impose a life-without-parole term on a 32-year-old "relatively small-time drug dealer" with an IQ of 72.

Judge David N. Hurd said child rapists and murderers will go free on parole while Justin D. Powell languishes in prison for life, largely because the defendant was convicted of drug crimes twice during his teenage years, more than a decade before the instant offense. Because of those prior convictions, the sole sentencing option was life, Hurd said.

"The increment of harm in this case bears no rational relationship to the increment of punishment that I must impose," Hurd said at a sentencing proceeding last week in Utica, N.Y. "This is what occurs when Congress sets [a] mandatory minimum sentence which distorts the entire judicial process... . As a result, I am obligated to and will now impose this unfair and, more important, unjust sentence."

U.S. v. Powell, 02-CR-206, came back to Hurd on remand from the 2nd U.S. Circuit Court of Appeals. Hurd had previously sentenced Powell to 20 years in prison, finding that his two prior crack cocaine possession convictions should be treated as one for sentencing purposes. But the 2nd Circuit reversed, holding that the prior incidents, separated by seven months and 250 miles, were not part of a single criminal episode. Consequently, with his third drug conviction Powell was subject to a mandatory minimum sentence of life.

Court records show Powell was caught up in a sting operation orchestrated by a drug dealer looking for leniency. Powell was, in the words of a prosecutor, a "worker bee" for his boss, a crack dealer named Leon Henry. Both were arrested as a result of their dealings with the confidential informant and both were convicted of dealing in 50 or more

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grams of crack cocaine.

Henry, with one prior conviction, was sentenced to 20 years and will be released at about age 50. Hurd, after finding that Powell's two prior convictions amounted to a single incident, imposed the same 20 year sentence on Powell.

Powell, however, made a tragic error in appealing his conviction, which prompted the prosecution to cross appeal the sentence. The 2nd Circuit held for the prosecution on both issues.

In an opinion by Judge Thomas J. Meskill, the panel said it understood Hurd's "obvious reluctance" to impose a life sentence "on a defendant whose prior felony drug convictions were committed years earlier, when the defendant was a minor."

Meskill said he was "sympathetic" to Powell's history of behavioral problems and low intelligence. But he found no way that transactions in New York City and Utica that occurred seven months apart and involved different drugs could be construed as anything other than separate offenses.

"It is ... Congress' prerogative to set mandatory minimums, and in this case the mandatory minimum is life imprisonment," Meskill wrote for a panel that also included Judges Robert D. Sack and Barrington D. Parker Jr.

At the resentencing last week, Hurd told the defendant that his predicament is largely one of his own making: Powell insisted on going to trial despite overwhelming evidence of guilt, refused to cooperate and then gambled with an appeal.

The judge also said society will suffer nothing "except for the enormous expense" by keeping Powell imprisoned for life. But he called the punishment a "black mark on our system of justice."

"There is something terribly wrong with a system in that you, a drug dealer, are imprisoned for life without release, while a defendant who crosses state lines and actually rapes and sexually abuses a very young child may be free in less than 13 years," Hurd wrote. "The harm you caused cannot compare to murder, torture, arson, rape, child abuse, manslaughter, embezzlement of millions of dollars by corporate executives or even the San Diego Congressman who took over two millions dollars in bribes."

SENTENCING 'TRAVESTY'

The law at issue, codified at 21 U.S.C. §846, was enacted in the mid-1980s to target drug kingpins. Defendants can escape the mandatory minimum sentence only by providing "substantial assistance" to the prosecution.

Critics claim the kingpins, rather than the "mules," are in the best position to provide that sort of assistance, and that to a large degree it is the "mules" rather than the kingpins who are subjected to the full brunt of the statute.

Additionally, in an August 2003 speech at the American Bar Association's annual meeting, U.S. Supreme Court Justice Anthony M. Kennedy urged the ABA to speak out against mandatory minimum sentences.

U.S. v. Powell was prosecuted by Assistant U.S. Attorney John M. Katko of Syracuse and defended by Assistant Federal Defender Lisa A. Peebles of Syracuse.

Peebles called the sentencing "a travesty" as it illustrates how mandatory sentencing laws eliminate judicial discretion. She said Powell had pleaded guilty to "nickel and dime drug transactions" when he was 16 and 17, which mandated a life sentence on the latest conviction. Peebles said she will now seek to reopen and overturn one of the earlier convictions.

"That's difficult, but you have to remain somewhat optimistic in light of the severity of the situation," she said. "It is not as if he will ever be eligible for parole. It is a very unfortunate situation. You've got to kind of scratch your head and wonder about this one."

Katko was not immediately available for comment.