



Paul Davis, 99-40091

JGChappas

to:

ksd\_robinson\_chambers

02/26/2010 03:48 PM

Cc:

Monice\_Crawford, Randy.Hendershot, Trey\_Burton, Melody\_Evans, Amy\_Seymour

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Dear Judge Robinson:

Thank you for your patience in this regard. I have re-reviewed Paul Davis' file, consulted with him along with the USPO and AUSA Hendershot. I believe that the following is an accurate assessment of the status of the above file as I can provide. Please let me know if I can provide additional information and clarification.

On June 1, 2000, Paul Davis was convicted of four (4) counts of distribution of cocaine base within 1000 feet of a school and one (1) count of possession of cocaine base with the intent to distribute within 1000 feet of a school. His PIR had him at a criminal history of IV. The PIR contained additional controlled substance, by way of relevant conduct, which was seized incident to his arrest. This substance was 16.9 grams of powder cocaine. Pursuant to Section B. of Application Note 10, contained in USSG 2D1.1, the PIR converted both the cocaine base and powder cocaine to 1,534.58 kilograms of marijuana giving rise to a BOL of 32. His BOL was enhanced an additional two (2) levels due to the drug activity's nearness to real property housing a school. The sentencing grid box contained a sentence of 210 to 262 months. On October 6, 2000, Paul Davis received a sentence of 210 months, on all counts, to run concurrently with each other.

Paul Davis exhausted all of his direct appeals and thereafter, pursued habeas relief. On December 17, 2007, the Court's Docket Screen reflects the receipt of some information relative to Paul Davis' case being a candidate for sentence modification in light of a change in the Sentencing Guidelines. I cannot ascertain what information the court received. I do know that the PD's office, at that time, were reviewing all files where sentence modification may be appropriate. On April 24, 2008, Paul Davis file a pro se motion for sentencing relief in addition to claims of ineffective assistance of counsel.

As to the claims of ineffective assistance, I did review his entire file and consulted with AUSA Hendershot. I believe that these claims have all been rehashed and decided in previous rulings by the Court. I have discussed this with Paul and he instructed me to pursue the issue requesting sentencing relief. Therefore, I would submit those issues of alleged ineffective assistance of counsel to the court for decision based upon the pleading filed and the prior rulings of the Court.

As to the claims for sentence modification, Paul Davis' motion argues that his BOL should be 30 instead of 32. He argues that the 76 grams of cocaine base would place him at the BOL of 30 and that the powder cocaine seized, assumingly if converted to cocaine base and added, would not put him in a BOL of 32 but for the conversion to marijuana. I believe, not for that reason, he is right that his BOL should be 30 and subject to the 2 level enhancement for the school zone.

Section (D)(i) of Application Note 10 for USSG 2D1.1 recommends that subdivision (B) of said Application Note should be applied to determine a BOL where there are different controlled substances. Subdivision B. suggests converting the multiple substances to their respective quantities of marijuana, per guidelines conversion table(s), to arrive at a BOL using the tables in 2D1.1. When that is done, (D)(i) recommends reducing the resulting BOL by 2 levels. (D)(ii) provides two (2) exceptions where the adjustment should not be given. (D)(ii)(I), denies the adjustment where the offense involved 4.5kg or more or less than 250mg. of cocaine base. (D)(ii)(II), denies the adjustment when the combined BOL of the multiple substances, after conversion per subdivision (B) and two level reduction, would be less than the BOL of the non-cocaine base substance alone. In this case. In this case, the 16.9 grams of powder cocaine would convert to 3.38kg of marijuana, which would be a BOL of 12. The BOL resulting from converting both drugs to marijuana and after (2) level reduction would be a 30, thus not triggering that exception.

I would submit that applying the new guidelines changes would result in a reduced, final BOL of 32, with a criminal history of IV and a corresponding sentence of 168 months if the lower box were again to be used. I believe that, subject to any additional input from the USPO and the AUSA that this motion is in a posture where it can be decided. Thank you for your patience with this matter.

Jim Chappas

pc: Paul Davis