

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

| | | |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Nos. 06-10060-01-WEB & |
| |) | 06-10146-01-WEB |
| SHAWN P. KINDER, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

Memorandum and Order

The matter came before the court for sentencing in the above-numbered cases on September 25, 2006.¹ The court ruled orally at the sentencing hearing on the defendant's request for a variant sentence. This written memorandum will supplement the court's oral ruling.

The defendant filed a sentencing memorandum asking the court to impose concurrent sentences in these cases rather than the consecutive sentences called for by the advisory guidelines. Specifically, defendant requested a controlling sentence of 120-months imprisonment in Case No. 06-10146, and a 60-month term of imprisonment in Case No. 06-10060, with the sentences to run concurrently. *See* Case No. 06-10060, Doc. 17. The motion indicated that the United States joined in the request. The defendant also previously filed two written objections to the Presentence Report, but at the sentencing hearing defense counsel withdrew the objections in light of the joint request

¹ Pursuant to Rules 11 and 20 of the Federal Rules of Criminal Procedure, the defendant Shawn P. Kinder pled guilty in this district to one count of interstate transportation in aid of racketeering (18 U.S.C. § 1952(a)(3)) and one count of unlawful possession of a firearm by a previously convicted felon (18 U.S.C. § 922(g)(1)). These counts were charged in separate indictments, one of which was filed in U.S. District Court for the District of Nebraska and the other was filed in the District of Kansas.

for a variant sentence.

Based on the factors in 18 U.S.C. § 3553(a), the court concluded that the request to run the sentences concurrently should be granted.

The court also notes the defendant's sentencing memorandum asks the court to recommend to the Bureau of Prisons that the defendant receive drug treatment and that he be placed in a facility in Englewood, Colorado, near his family. The court concludes that such matters, however, are for the Bureau of Prisons to determine.

Conclusion.

The parties' request for a variant sentence is GRANTED. The term of imprisonment of 60 months on Count 1 in Case No. 06-10060 and the 120-month term of imprisonment in Case No. 06-10146 shall run concurrently. The 3-year term of supervised release imposed in each case shall also run concurrently. The defendant's objections to the Presentence Report are DENIED as moot.

IT IS SO ORDERED this 25th Day of September, 2006, at Wichita, Ks.

s/Wesley E. Brown
Wesley E. Brown
U.S. Senior District Judge