

U.S. v. Allen: A Welcome Clarification

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I. THE SENTENCING GUIDELINES AND THE SIXTH CIRCUIT’S CURRENT APPROACH

The Sentencing Guidelines help judges to determine the appropriate sentence for offenders based on the facts of the offense and other factors.¹ They are “the starting point for federal sentencing in most cases,”² and they help determine if a defendant’s sentence is considered reasonable.³ The United States Sentencing Commission, a bipartisan agency that helps Congress and the executive branch make effective and efficient policies concerning crime, establishes the guidelines to ensure consistency in federal sentencing and appropriateness of punishment for federal offenders.⁴ However, some of the Sentencing Guidelines are based on old data and attitudes, and have not been updated to reflect current understandings of certain offenses.⁵

In *U.S. v. Thomas-Mathews*, a defendant with a history of drug offenses who had been on the right track before being derailed by the COVID-19 pandemic was convicted of distributing crack cocaine.⁶ He was sentenced to 180 months in prison despite his arguments concerning the outdatedness of the disparity and

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¹ U.S. DEP’T. OF JUST., STATEMENT OF THE U.S. DEP’T. OF JUST. BEFORE THE COMM. ON THE JUDICIARY U.S. SENATE FOR A HEARING ENTITLED EXAMINING FED. SENT’G FOR CRACK AND POWDER COCAINE 4 (2021) [hereinafter STATEMENT], <http://cdn.cnn.com/cnn/2021/images/06/22/equal.act.testimony-.final.pdf> [<https://perma.cc/8SU9-MBNH>].

² CHARLES DOYLE, CONG. RSCH. SERV., R41696, HOW THE FEDERAL SENTENCING GUIDELINES WORK: AN OVERVIEW 1, <https://crsreports.congress.gov/product/pdf/R/R41696/9> (updated July 2, 2015).

³ *Id.*

⁴ *About*, U.S. SENT’G COMM’N, <https://www.ussc.gov/about-page> [<https://perma.cc/8W5L-YS25>] (last visited Mar. 3, 2024).

⁵ An infamous example of this is the crack-to-powder disparity, something the U.S. Sentencing Commission has been aware of since 1995. See STATEMENT, *supra* note 1, at 1.

⁶ *U.S. v. Thomas-Mathews*, 81 F.4th 530, 534–35 (6th Cir. 2023).

mitigating personal factors.⁷ The United States Court of Appeals for the Sixth Circuit found that his sentence was procedurally unreasonable because the district court treated the Sentencing Guidelines as mandatory, thus ceding its sentencing discretion to Congress.⁸ This case gave defendants the ability to object to unjust, unfair policies underlying the Sentencing Guidelines, and as long as the objections were not frivolous, the district court had to explicitly address them in its decision.⁹

Exactly how much attention the district court had to give to a defendant's arguments was unclear after the *Thomas-Mathews* decision, with the Sixth Circuit concluding that "the district court should expressly consider Thomas-Mathews' arguments concerning the [mitigating personal] factors and his argument that a within Guidelines sentence is greater than necessary in his individual case."¹⁰ The sentencing court must offer more than a conclusory statement and there must be enough evidence in the record to show that the court considered the arguments.¹¹ However, the United States Court of Appeals for the Sixth Circuit recently decided a case that provides more clarity on how much explanation is needed.

II. *U.S. v. ALLEN*

In *U.S. v. Allen*, the United States Court of Appeals for the Sixth Circuit dealt with a defendant using *Thomas-Mathews* to challenge his sentence.¹² Allen, the defendant, was a middleman in a meth operation, but only sold small amounts to one person, who unbeknownst to him had become a confidential informant.¹³ Allen's sole customer initiated three sales, and the meth that Allen delivered was extraordinarily pure (99–100%).¹⁴ He was arrested with a pound of the 99% pure meth, and then admitted that he was selling it to his customer.¹⁵ He pled guilty to possessing methamphetamine with intent to distribute.¹⁶

At the sentencing stage, Allen made policy arguments regarding the Sentencing Guidelines' reliance on meth purity levels.¹⁷ He argued that the Guidelines focused too much on quantity and purity of the drug and that the purity levels in the Guidelines do not reflect the current landscape of meth distribution.¹⁸ He also pointed out some mitigating factors, like his steady job,

⁷ *Id.* at 538.

⁸ *Id.* at 543.

⁹ *Id.* at 543–47.

¹⁰ *Id.* at 547.

¹¹ *Thomas-Mathews*, 81 F.4th at 546.

¹² *U.S. v. Allen*, 93 F.4th 350, 357–58 (6th Cir. 2024).

¹³ *Id.* at 354.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Allen*, 93 F.4th at 354.

his relationships with his family, and his lack of history of drug trafficking.¹⁹ He emphasized that he was not a drug kingpin and had only sold small quantities of meth before his customer started requesting larger amounts as a confidential informant.²⁰

The district court recognized that the Sentencing Guidelines are but a starting point and that they must do “an individualized assessment.”²¹ It tried to address all of Allen’s arguments one-by-one, acknowledging his employment, his family, and his lack of previous offenses. However, it also weighed the seriousness of the offense and the unprecedented 100% purity, which made Allen’s offense more dangerous than a typical sale of drugs.²² Ultimately, Allen was sentenced to 108 months in prison, which was the lowest recommended sentence provided by the Sentencing Guidelines.²³

On appeal, Allen argued that his sentence was procedurally unreasonable.²⁴ He claimed that the district court failed to address three of his non-frivolous arguments.²⁵ First, he posited that the government played a role in his crime and caused him to increase the amount he sold, and that the district court did not properly address this.²⁶ At sentencing, he argued that he was just a minor dealer before the government pushed him to sell more.²⁷ The district court explicitly considered this assertion, saying that Allen had no history of drug trafficking and that he was not a kingpin.²⁸ However, as the case progressed, Allen adjusted and tried to say the district court did not address a “police provocation” argument or a “sentencing entrapment” argument.²⁹ The Sixth Circuit noted this mutating argument, and while it is true that the district court did not talk about those two, they were never brought up at sentencing.³⁰

Second, Allen said that his sentence was procedurally unreasonable because the district court ceded its sentencing discretion to the legislative branch, pointing to the recently decided *Thomas-Mathews* case.³¹ He argued that the district court rejected his arguments for a lower sentence because it treated Congress’s views on meth amounts and purity as mandatory, similar to how the court in *Thomas-Mathews* acknowledged the defendant’s mitigating factors but expressly stated that Congress’s inaction was why they decided to follow the Guidelines.³² However, the district court in *Allen* did not treat the Guidelines as

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 355.

²² *Id.*

²³ *Id.*

²⁴ *Allen*, 93 F.4th at 355.

²⁵ *Id.* at 355–59.

²⁶ *Id.* at 355–56.

²⁷ *Id.* at 356.

²⁸ *Id.*

²⁹ *Id.* at 356–57.

³⁰ *Allen*, 93 F.4th at 357.

³¹ *Id.* at 358.

³² *Id.*; *U.S. v. Thomas-Mathews*, 81 F.4th 530, 542 (6th Cir. 2023).

mandatory or cede its discretion over sentencing to Congress.³³ It repeatedly showed that it was aware of the power to differ from the guidelines by using phrases like “individualized assessment,” “starting point,” and “just one factor.”³⁴ It addressed Allen’s mitigating personal factors and took them into consideration, along with the Guidelines’ recommendations, which exemplifies a district court exercising its discretion.³⁵

Finally, Allen contended that the district court only based its sentence on the Guidelines’ range based on amount and purity of the meth.³⁶ He made a policy argument that the Guidelines used purity levels based on the drug trade of the 1990s, and that a policy once meant to target kingpins is now being used to excessively punish low-level dealers.³⁷ District courts can differ from the Sentencing Guidelines for purely policy-based reasons,³⁸ but that does not mean that they must do it every time a defendant makes a policy argument.³⁹ The district court did not base the sentence only on the amount and purity, but they also expressly considered the facts of the offense and Allen’s mitigating characteristics.⁴⁰

III. ANALYSIS

Drug policy is a contentious topic in American society, with passionate debates over how best to deal with the pressing issues.⁴¹ According to the Federal Bureau of Prisons, over 64,000 people (or 44.4% of inmates) are in federal prison for drug offenses, which shows that policies surrounding drugs and how offenders are sentenced can have major impacts on society.⁴² Recently, the opioid crisis and fentanyl have been constants in the news, and Americans are more negative about the U.S.’s responses to illegal drugs now than ever

³³ *Allen*, 93 F.4th at 359.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 359.

³⁷ *Id.* at 354 (arguing that because cartels have taken control of methamphetamine distribution, the purity of the drug in average circulation is now much higher than it was in 1995).

³⁸ *Kimbrough v. U.S.*, 552 U.S. 85, 106–07 (2007).

³⁹ *Allen*, 93 F.4th at 359–60.

⁴⁰ *Id.*

⁴¹ See, e.g., Dustin Jones & Devin Speak, *Trump Wants the Death Penalty for Drug Dealers. Here’s Why That Probably Won’t Happen*, NPR (May 10, 2023), <https://www.npr.org/2023/05/10/1152847242/trump-campaign-execute-drug-dealers-smugglers-traffickers-death-row> [<https://perma.cc/BVY3-X5DM>]; Eric Westervelt, *Oregon’s Pioneering Drug Decriminalization Experiment Is Now Facing the Hard Test*, NPR (June 18, 2021), <https://www.npr.org/2021/06/18/1007022652/oregons-pioneering-drug-decriminalization-experiment-is-now-facing-the-hard-test> [<https://perma.cc/V89B-2J EJ>].

⁴² *Offenses*, FED. BUREAU OF PRISONS, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp [<https://perma.cc/SJS3-YH4R>] (last visited Mar. 29, 2024).

before.⁴³ Drug policies and sentencing are being reexamined across the country,⁴⁴ including in the courts.

One recent example of drug policy being reconsidered was the EQUAL (Eliminating a Quantifiably Unjust Application of the Law) Act, legislation that would have eliminated the well-documented, widely acknowledged crack-to-powder cocaine sentencing disparity currently in the Sentencing Guidelines.⁴⁵ Since 1995, the U.S. Sentencing Commission has been aware of the systemic effect that this disparity has on Black Americans,⁴⁶ and politicians on both sides have proposed solutions.⁴⁷ The EQUAL Act easily passed in the U.S. House of Representatives, but ultimately died in the Senate, leaving the unfair disparity in place.⁴⁸

While it is possible that the legislative branch could ameliorate all the outdated, unjust Sentencing Guidelines, it does not appear that it will happen soon. The odds of the methamphetamine Guidelines being updated are slim, considering that Congress failed to fix a problem as publicized and proven as the crack-to-powder cocaine disparity.⁴⁹ A politician that proposed changing the Guidelines for meth would open themselves up to be attacked for being weak on drugs. In a time when drug offenses and policies are so relevant in American society and political discourse, this could seriously harm someone's political career. Because of this, the solution to the unfair Guidelines seemingly lies with the courts.

Thomas-Mathews was decided less than one year ago, but its impact on sentencing arguments is already appearing in Sixth Circuit cases. In *Allen*, the defendant relied heavily on it, directly analogizing his case to it and using similar arguments.⁵⁰ While *Allen* was ultimately unsuccessful after invoking

⁴³ Jeffrey M. Jones, *Majority Now Say U.S. Losing Ground on Illegal Drug Problem*, GALLUP (Nov. 10, 2023), <https://news.gallup.com/poll/514142/majority-say-losing-ground-illegal-drug-problem.aspx> [<https://perma.cc/J2CE-ADFB>].

⁴⁴ Hannah Rabinowitz, *Attorney General Garland Instructs Prosecutors to End Sentencing Disparities Between Crack and Powder Cocaine*, CNN, Dec. 16, 2022 <https://www.cnn.com/2022/12/16/politics/crack-powder-cocaine-sentencing-disparities/index.html> [<https://perma.cc/4HWW-DTTE>].

⁴⁵ Carrie Johnson, *A Bill That Would Have Impacted Racial Disparity in Cocaine Crimes Died in the Senate*, NPR, Jan. 10, 2023, <https://www.npr.org/2023/01/09/1147909174/a-bill-that-would-have-impacted-racial-disparity-in-cocaine-crimes-died-in-the-s> [<https://perma.cc/FP3X-8YSW>].

⁴⁶ See STATEMENT, *supra* note 1, at 1.

⁴⁷ Governor Asa Hutchinson, *Gov. Asa Hutchinson: It's Time to Fix an Old Wrong and End the Disparity Between Crack and Cocaine Offenses*, FOX NEWS, June 8, 2021, <https://www.foxnews.com/opinion/end-crack-cocaine-offenses-gov-asa-hutchinson> [<https://perma.cc/K593-9QNN>]; Forbes Breaking News, *Dick Durbin Uses Flour To Demonstrate Sentencing Disparity Between Crack and Powder Cocaine*, YOUTUBE (June 26, 2021), <https://www.youtube.com/watch?v=jkGFMGIrljw> [<https://perma.cc/WP8Y-W4GJ>].

⁴⁸ Johnson, *supra* note 46.

⁴⁹ *Id.*

⁵⁰ *Allen*, 93 F.4th at 358.

Thomas-Mathews, this case shows that *Thomas-Mathews* provides a new route for defendants to take when appealing sentencing decisions. It also clarifies what exactly *Thomas-Mathews* requires of district court judges by describing conduct that does not fall under the case.

In *Allen*, the defendant argued that the district court ceded discretion to Congress simply by referencing the fact that Congress determined that certain weights and purities of methamphetamine need to be punished accordingly.⁵¹ Allen believed that this was enough to show that the district court treated the Guidelines as mandatory and thus ceded their sentencing discretion to Congress.⁵² However, the district court in *Allen* differed greatly from the district court in *Thomas-Mathews*. In the former, the district court explicitly took into consideration Allen's policy arguments regarding the use of purity standards in the Guidelines, his employment history, and his family life.⁵³ It weighed these factors with the Guidelines' recommendations and Congress's views, but never hinted that it was treating the Guidelines as mandatory.⁵⁴ In *Thomas-Mathews*, the district court refused to consider the defendant's policy arguments and mitigating personal factors, and openly treated the Guidelines as mandatory.⁵⁵ The cases might both involve a defendant getting sentenced for drug offenses, but the similarities end there. The district court in *Allen* properly exercised its discretion while weighing the defendant's arguments, which is exactly what *Thomas-Mathews* requires.

This case casts some doubt on the effect that *Thomas-Mathews* will have on the sentencing of drug offenders. However, the fact that Defendants are already utilizing the case shows that it does have an effect. Subsequent cases will refine the impact that *Thomas-Mathews* has on drug sentencing, and while its effect might not be as great as originally thought, it can still help to solve injustice in the Sentencing Guidelines. *Allen* shows that while district court judges have a similar amount of discretion in deciding the sentence, they do not have as much discretion on explaining the decision. Allen raised relevant arguments about his personal characteristics and problematic policies underlying the Sentencing Guidelines.⁵⁶ The district court analyzed all of them, expressly took his arguments into consideration, and then explained why it chose to follow the Sentencing Guidelines.⁵⁷ While his arguments were ultimately unsuccessful, Allen received reasons for why they were and knew that his arguments were not falling on deaf ears. Additionally, a district court's explanation of a defendant's arguments leads to productive conversations, both inside and outside of the courtroom, on the effectiveness of the Sentencing Guidelines and how they can be improved.

⁵¹ *Id.* at 358–59.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ U.S. v. *Thomas-Mathews*, 81 F.4th 530, 542 (6th Cir. 2023).

⁵⁶ *Allen*, 93 F.4th at 355–60.

⁵⁷ *Id.* at 359–60.

Thomas-Mathews did not provide much clarity for how much explanation is needed to make a sentence procedurally reasonable, but *Allen* gives an example that courts can follow to be safe. While district courts are not required to give a “detailed discussion” of each of a defendant’s arguments, they must give more than conclusory statements.⁵⁸ In *Allen*, the district court addressed every argument that Allen made and weighed them alongside the Guidelines’ recommendations for his sentence. Courts should attempt to imitate what the district court in *Allen* did to ensure that their sentencing decisions are procedurally reasonable. Since *Thomas-Mathews* is already being relied upon in cases, figuring out what exactly district courts are required to do in cases like these could happen very soon.

IV. CONCLUSION

Given the current political landscape and the country’s attitude toward drug crimes, it does not appear that problems in the Sentencing Guidelines will be solved by the legislative branch any time soon. Thus, the other branches should step up and ensure that the Sentencing Guidelines are actually promoting justice. *Thomas-Mathews* and *Allen* show how courts can do this. *Allen* is not a revolutionary case that greatly expounds upon the principles laid out in *Thomas-Mathews*, but it does give district courts a model to ensure procedural reasonableness. The district court in *Allen* did not give intricately detailed discussions on every one of Allen’s non-frivolous arguments, nor was it required to do so;⁵⁹ however, it did address and weigh Allen’s arguments against the “starting point” Guidelines, which is a proper exercise of a district court’s sentencing discretion. This case, like *Thomas-Mathews*, allows defendants convicted of a drug offense to make arguments about the underlying policy rationales behind the Sentencing Guidelines that the district courts must consider in their sentencing decisions. In a time rife with debate and contention over drug policy, defendants making these arguments and courts addressing them might lead to some solutions, or at least conversations about them.

⁵⁸ U.S. v. Brooks, 628 F.3d 791, 798 (6th Cir. 2011); *Thomas-Mathews*, 81 F.4th at 546.

⁵⁹ *Allen*, 93 F.4th at 355–60.