

United States Court of Appeals For the First Circuit

No. 02-1729

UNITED STATES,

Appellee,

v.

AUSTIN R. WILKERSON,

Defendant, Appellant.

ERRATA

The opinion of this court issued June 9, 2005, is amended as follows:

Withdraw the next to the last paragraph in the opinion commencing with the words "The district judge sentenced" and substitute the following paragraph:

The district judge sentenced Wilkerson to the lowest available sentence under the Guidelines. He repeatedly expressed his concern about disparate treatment between federal and state court sentences in similar cases, but stated that the Guidelines did not permit him to take that disparity into account. This statement of the district judge was in accord with our earlier decision in United States v. Snyder, 136 F.3d 65, 69 (1st Cir. 1998) (Selya, J.)* The district judge also observed that Wilkerson had the most horrible young life he had seen in 17 years on the bench. As this court recognized in Heldeman, where there is a reasonable indication that the district judge might well have given a different sentence

*We express no opinion at this time about whether federal-state sentencing disparities may be considered under the post-Booker advisory guidelines.

under an advisory guidelines regime, and it would be easy enough for him to say no with a minium expenditure of effort, we are persuaded that remand is required. 402 F.3d at 224. We express no view on whether defendant should be resentenced or on any possible resentence.

The petitions for rehearing by the panel should then be denied as moot.