

8801929/A
SRA
BJT
PAM

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
vs.) Criminal No. 88-200
)

NANCY BUCARO)
GEORGE JOSE TURNER)
ANDRE RASHID KIRBY)

UNITED STATES OF AMERICA)
vs.) Criminal No. 88-219
)

BRENDA RAGLAND SMITH)
MARY KATHRYN McNALLY)

UNITED STATES OF AMERICA)
vs.) Criminal No. 88-220
)

DONALD SUNKIN)

UNITED STATES OF AMERICA)
vs.) Criminal No. 88-221
)

RICHARD WILLIAMS)

ORDER OF COURT

AND NOW, this 28th day of March 1989, it appearing
to the court as follows:

(1) The Sentencing Commission has stated at page 2.34
of the Guidelines that "it has used the sentences provided in,
and equivalences derived from, the statute (21 U.S.C.
§ 841(b)(1)), as the primary basis for the guideline sentences."

(2) The statute to which reference is made does not
contain equivalences for controlled substances.

(3) The Sentencing Commission has promulgated a Drug Quantity Table which establishes a base offense level of 12 for 2 grams or less of fentanyl, or 500 milligrams or less of a fentanyl analogue.

(4) The Sentencing Commission has promulgated a Drug Equivalency Table which establishes that one gram of 3-methyl-fentanyl is equivalent to 125 grams of heroin.

(5) Three methylfentanyl is a fentanyl analogue.

(6) Representatives of the Sentencing Commission have advised representatives of the Probation Department and the Office of the United States Attorney that the Commission has erred.

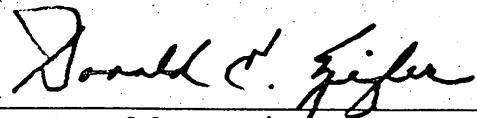
(7) Counsel for the defendants in the above cases contend that the court must apply the base offense level established by the Drug Quantity Table.

(8) Counsel for the United States contends that the court must calculate the base offense level established by the Drug Equivalency Tables.

IT IS THEREFORE ORDERED that the United States shall file a brief within 45 days relative to the issue concerning the proper calculation of the base offense level and the application of the provisions of § 5K2.1 and 2.

IT IS FURTHER ORDERED that the Sentencing Commission shall file a brief within 45 days that addresses (a) the conflict between the Drug Quantity Table and Drug Equivalency Table, (b) the application of the term fentanyl analogue to 3-

methylfentanyl, and (c) the arguments raised by the defendants and the United States.



Donald E. Ziegler
United States District Judge

cc: Counsel of record.