

whether the side effects are sufficiently severe as to impair their ability to assist in their defense and whether the side effects can be ameliorated.

Federal Sentencing Guidelines

Jeffrey C. Rouse, MD
Fellow in Forensic Psychiatry

H. W. LeBourgeois, III, MD
Assistant Professor of Psychiatry
Director, Forensic Psychiatry Fellowship

Department of Psychiatry and Neurology
Tulane University School of Medicine
New Orleans, LA

District Court Failed to Address the Defendant's Schizoaffective Disorder as it Related to Sentencing Guidelines and it Remains Mandatory to Do So, Despite the Advisory Nature of Sentencing Guidelines Post Booker

In *U.S. v. Miranda*, 505 F.3d 785 (7th Cir. 2007), the Seventh Circuit reviewed the sentencing of Luis Miranda by the district court for the Northern District of Illinois, Eastern District, in a conviction for bank robbery. The appeals court sought to determine if the trial court had committed reversible error by failing during sentencing to address the evidence of Mr. Miranda's schizoaffective disorder. The Seventh Circuit addressed statutes mandating consideration of "nonfrivolous" arguments regarding mental health status at sentencing, despite the advisory nature of federal sentencing guidelines in the post-*Booker* era.

Facts of the Case

On September 12, 2005, Mr. Miranda entered a bank and presented a teller with a note demanding money and indicating that he was armed with both a firearm and a bomb. After taking approximately four thousand dollars, he left the bank but was turned in to police the next day by his wife Melissa, who recognized him in a newspaper photograph.

For years before the robbery, Mr. Miranda had told his wife of auditory hallucinations of a command nature, of paranoid delusions, of visual hallucinations, and of symptoms consistent with thought broadcasting. He had attempted suicide at least twice. Once, he had attempted to set himself on fire after dousing himself with gasoline. In the second

episode involving a firearm, Mrs. Miranda called police who took Mr. Miranda to a hospital for psychiatric treatment. Police found that Mr. Miranda's firearm owner's identification card had expired and, upon his discharge from the hospital, returned to arrest him for unlawful possession of a firearm. At the time of arrest, he was further discovered to possess a crack pipe and a small amount of cocaine and was charged with possession of a controlled substance. He subsequently pleaded guilty to both charges. This comprised the total of his criminal history before the bank robbery.

After pleading guilty to bank robbery, Mr. Miranda was examined at counsel's request by a court-appointed psychiatrist, Dr. Daniel Yohanna. Dr. Yohanna noted that Mr. Miranda had been hospitalized for depression, suicidality, substance abuse, and psychosis six times throughout his life and that he was in outpatient treatment for the three years leading up to his arrest. At the time of Dr. Yohanna's interview, Mr. Miranda was taking six medications related to his mental health and medical conditions, and no illegal drugs had been detected in Mr. Miranda's system for more than a year. Dr. Yohanna's diagnosis for Mr. Miranda was schizoaffective disorder, cocaine dependence in remission, and opiate dependence in remission, based on his interview and review of collateral sources. Dr. Yohanna's testimony indicated that at the time of the robbery, Mr. Miranda was experiencing auditory command hallucinations telling him that he should rob a bank. He further testified, "I thought that what was driving him was the schizophrenia more than the drug use, so that's what I thought was the predominant disease driving him." Mr. Miranda also testified about his mental health history, including the attempt to kill himself by dousing himself with gasoline and trying to set himself on fire.

During the sentencing phase, Mr. Miranda's counsel argued for a below-guidelines sentence because of his severe mental illness and because his mental illness was a significant factor in the commission of the crime. The government argued that he was "in fact under the influence of drugs at the time of the offense" and that, because of his mental illness, he should be incarcerated for his own protection. The court concluded that he "understood the nature of his crime and was aware that he was committing the crime and therefore he should be held accountable for his conduct" (*Miranda*, p 790). Citing retri-

bution, incapacitation, and deterrence as reasons, the court imposed a 50-month sentence, 4 months longer than the sentence sought by the government.

Miranda appealed the sentence, contending that the court failed to consider the “non-frivolous arguments” with regard to the uncontested evidence of mental illness at the time of the crime and with regard to his claim that his previous criminal history did not reflect the seriousness of his prior criminal conduct. In addition, he contended that the district court had erred by giving weight to the protection of Mr. Miranda from himself as a factor in sentencing.

Ruling and Reasoning

The Seventh Circuit vacated the sentencing decision, finding that the district court had erred in not addressing Mr. Miranda’s arguments for downward departure from federal sentencing guidelines. The case was remanded for resentencing, with instructions to the district court to grant “individualized analysis to Miranda’s factually and legally supported sentencing arguments.”

According to *United States v. Robinson*, 435 F.3d 699 (7th Cir. 2006), in determining sentencing for a defendant, federal courts are required to calculate the applicable sentencing guidelines and then to decide whether to impose a sentence greater or lesser than advised. The sentencing ranges themselves are now considered advisory, after the decision in *United States v. Booker*, 543 U.S. 220 (2005); however, imposition of a particular sentence must still follow several factors delineated in 18 U.S.C. § 3553(a). This statute mandates that courts consider a sentence in light of certain factors, such as “the nature and circumstances of the offense,” “the history and characteristics of the defendant,” and the need for the sentence to serve the goals of punishment, deterrence, and incapacitation. Although the concept of departures *per se* is obsolete in post-*Booker* sentencing, the district court may apply guidelines related to diminished capacity due to mental illness (Guideline 5K2.13) by way of analyzing the Section 3553(a) factors (*United States v. Johnson*, 427 F.3d 423 (7th Cir. 2005)).

Courts cannot interject their own philosophies of sentencing if they are in conflict with these factors, per *United States v. Dean*, 414 F.3d 725 (7th Cir. 2005), and courts are required to subject “the defendant’s sentencing to the thorough adversarial testing contemplated by federal sentencing procedure,” per

Rita v. United States, 127 S. Ct. 2456 (2007). If a defendant challenges a within-guidelines sentence as unreasonable, the trial court is required to state why the particular sentence is appropriate with regard to the Section 3553(a) factors (*Robinson*, p 701; *United States v. Cunningham*, 429 F.3d 673 7th Cir. 2005)).

Mr. Miranda contended that, during sentencing, the court did not adequately consider the psychiatric evidence before it with regard to the Section 3553(a) factors allowing consideration of diminished capacity and imposed its own ideas about mental illness as related to sentencing, appearing to apply a criminal-responsibility standard erroneously with regard to the defendant’s mental illness. Appellate review recognized that his argument regarding mental illness as grounds for downward departure was sufficient to warrant comment by the trial court, stating that this argument was “not so weak as not to merit discussion.” Thus, the appellate court stated “we cannot have confidence that the judge adequately considered the Section 3553(a) factors. Anyone acquainted with the facts of Miranda’s well-documented mental health history would not know why the district court rejected his arguments for a lesser sentence unless the court commented on its reasons” (*Miranda*, p 792).

Appellate review affirmed that Mr. Miranda’s schizoaffective disorder could constitute a recognized ground for diminished capacity with regard to Section 3553(a) factors. Mr. Miranda argued that his mental illness reduced the need for deterrence, made incapacitation by imprisonment less appropriate, and rendered him less deserving of punishment. The appellate court noted that “the crux of Miranda’s claim was that he was not an incorrigible criminal, purposely flouting the law on multiple occasions, but rather was a working man, with a wife and two children, who would not have committed these crimes but for his mental illness” (*Miranda*, p 795).

In addition, the district court was noted to have failed to consider Mr. Miranda’s claim that his previous convictions should be viewed in light of his mental illness and that this criminal history, *per se*, overstated the likelihood of future criminal activity. Although the district court mentioned Mr. Miranda’s mental illness at sentencing, it was determined to have done so without addressing “Miranda’s principal, non-frivolous arguments based on these section 3553(a) factors” including the argument for mitigation with regard to previous convictions. Based on the trial court’s failure to address these “non-frivo-

lous” contentions by Mr. Miranda, the case was remanded to the district court for resentencing and consideration.

Discussion

U.S. v. Miranda affirms a post-*Booker* role for psychiatric evidence and testimony with regard to federal sentencing procedure. Although federal sentencing guidelines are deemed advisory and the concept of departure has been rendered obsolete by *Booker*, non-frivolous evidence for diminished capacity due to mental illness merits explicit consideration by federal district courts at sentencing. Although district courts still retain discretion to accept or reject these arguments at sentencing, *U.S. v. Miranda* suggests a protected role for psychiatric testimony and evidence during the sentencing phase in federal cases.

Federal Sentencing Guidelines

Drew Morson, MD

Fellow in Forensic Psychiatry

D. Clay Kelly, MD

Assistant Professor of Psychiatry

Department of Psychiatry and Neurology

Tulane University School of Medicine

New Orleans, LA

Decisions That Fail to Follow U.S. Sentencing Guidelines Are No Longer Presumed Unreasonable.

In *Gall v. United States*, 128 S. Ct. 586 (2007), the U. S. Supreme Court again returns to the question of federal judges’ authority to decide the punishment for convicted criminals under the federal sentencing guidelines crafted by the United States Sentencing Commission in 1984. The specific question is whether a sentence that is below the range in the guidelines is lawful. The Court held that appeals courts must review all sentences—whether inside, just outside, or significantly outside the guidelines range—employing a deferential abuse-of-discretion standard.

Facts of the Case

In late winter of 2000, Brian Gall, a 21-year-old student at the University of Iowa, engaged in a collaborative effort with several peers to distribute MDMA (Ecstasy). He participated in the distribution of the illegal substance for approximately seven

months and then voluntarily withdrew from the conspiracy. He subsequently graduated from college and moved to Arizona and then Colorado where he began work in construction and eventually earned a living as a master carpenter. He did not use any illegal drugs after graduating from college. Federal law enforcement agents approached him, approximately two years after his involvement in the distribution scheme, to investigate his role. He admitted to his limited participation. One and a half years after this initial interrogation he was indicted by the Southern District of Iowa, along with seven other defendants, on charges related to conspiracy to distribute Ecstasy, cocaine, and marijuana. After he received the indictment, he returned to live in Iowa and while awaiting further proceedings began his own business in construction.

Mr. Gall pleaded guilty to charges related to his participation in the conspiracy. The government recognized his cooperation with its investigation and did not express any doubts about the veracity of his claim of limited participation and full withdrawal from the distribution scheme before any known police investigation. Indeed, his probation officer noted in her presentencing report that he had no significant criminal history and was not a leader in the conspiracy. Nonetheless, despite further acknowledgment of his entirely lawful conduct in the years since his withdrawal from the criminal enterprise, the United States Attorney’s office recommended 30 to 37 months in prison, a sentence that would fall within federal sentencing guidelines.

The district court judge delivered a sentence well below the U.S. Attorney’s recommendations and the federal guidelines. Rather than the minimum 30 months of imprisonment as recommended by the guidelines, Mr. Gall received 36 months of probation. The district judge explained his ruling, while citing factors to be considered pursuant to 18 U.S.C. § 3553(a). He noted in his sentencing memorandum the factors already discussed: Mr. Gall’s lack of criminal history, his pre-indictment withdrawal from the conspiracy, his lawful and productive life since his criminal conduct, and the support of his family and friends. He also recognized Mr. Gall’s age at the time of his offense as a factor in assessing the proper punishment. The court concluded: “[He] understands the consequences of his criminal conduct and is doing everything in his power to forge a new life.” The district judge emphasized that the reduced sentence