Reducing a Federal Sentence Cannot be Based on Factors Other Than Substantial Assistance to the United States

Shannon Hansen MD
Fellow in Forensic Psychiatry

Richard L. Frierson MD
Professor of Psychiatry and Vice Chair for Education
Director, Forensic Psychiatry Fellowship

Department of Neuropsychiatry and Behavioral Science
University of South Carolina School of Medicine
Columbia, SC

A Federal District Court May Not Reduce a Sentence Based on Factors Other Than a Federal Defendant's Substantial Assistance to the United States

In *United States v. Clawson*, 650 F.3d 530 (4th Cir. 2011), an appeal was brought to the Fourth Circuit Court of Appeals by the federal government after a Federal District Court granted a motion under Federal Rule of Criminal Procedure 35(b) to reduce James Clawson's prison sentence for distribution of child pornography from 96 months to one day. The government alleges that his reduction was granted solely on the court's concern that he would not receive his preferred medication for attention deficit hyperactivity disorder (ADHD) while in prison, not because he had assisted the government.

Facts of the Case

On October 16, 2009, Mr. Clawson pleaded guilty before the district court to the charge of distribution of child pornography. At that time, he admitted that he was an administrator of an electronic bulletin board dedicated to child pornography and had distributed several thousand pornographic images and videos of children. He requested the statutory mandatory minimum of 60 months and focused his request on the argument that imprisonment would interfere with his ADHD treatment. He provided multiple letters in his defense from his treating psychiatrist, citing the "emotional and psychological perils he [would] face each day, including uncontrollable impulsivity, mood swings and loss of temper, and an inability to follow instructions and established procedures" (*Clawson*, p 533).

On January 8, 2010 the court sentenced Mr. Clawson to 96 months' imprisonment and recommended that he be assigned to a facility where he would have access to mental health treatment and his ADHD medication, dextroamphetamine. The government filed its Rule 35(b) motion on March 10, 2010, which argued that he "deserve[d] substantial credit for his cooperation" and requested that his sentence be reduced by 20 percent, which would have resulted in a sentence of approximately 76 months. That same day, he filed an emergency motion requesting that his self-surrender date be postponed. He requested additional time, as Bureau of Prisons officials had determined that dextroamphetamine was not on the Bureau of Prisons' formulary of approved medications and he had been found not to meet criteria for ongoing treatment for ADHD while incarcerated. The motion also informed the court that the Bureau had asked him to provide additional information to the medical staff at the prison facility; therefore, he was requesting additional time to gather medical evidence relevant to his treatment needs.

The court held a hearing on March 26, 2010, on the government's Rule 35(b) motion. It found that the Bureau of Prisons' response on the matter was "completely unreasonable," as Mr. Clawson had been treated with the same medication for 21 years, and the psychiatrist rendering his care was a government doctor from the Department of Veterans Affairs. The court further noted that without his medication, the quality of his life in prison would lead to a questionable violation of the Eighth Amendment. It postponed resolution of his self-report date indefinitely until the Bureau of Prisons could provide the government with a medical plan of treatment. The Bureau subsequently replied that since his preferred medication was a Schedule II controlled substance with significant potential for abuse, it was not on the current formulary. However, based on symptom severity, nonformulary requests for dextroamphetamine could be made should his treating team find it necessary to use it. On April 23, 2010, the court held a hearing and determined that it was dissatisfied with the Bureau's plan of care. The court stated that there was no question that Mr. Clawson would not be placed on the same medication that had worked for him for many years and that his subsequent behavioral problems would interfere with his tenure in

prison. The court added that there was concern that Mr. Clawson did not pose a "real danger to the community" and that he could be adequately controlled with supervision. He was sentenced to one day followed by 15 years of supervised release, the first 3 years of which he would serve on home confinement with electronic monitoring.

An appeal followed. The government argued that the court erred in reducing Mr. Clawson's sentence based on his access to medication, not on his substantial cooperation with the government. Mr. Clawson contended that the language of Rule 35(b) does not limit the factors that the court may consider when reducing a sentence. He also argued that the court used Rule 35(b) to prevent a sentence that would have equated to cruel and unusual punishment under the Eighth Amendment, as he would have been incarcerated without access to a needed medication.

Ruling and Reasoning

The Fourth Circuit Court of Appeals held that the district court exceeded its authority under Rule 35(b) by granting the motion based on factors other than the defendant's cooperation with the government in investigating or prosecuting another person. It found that Federal Rule of Criminal Procedure 35(b) mentions no factors other than assistance to the government that may be considered when deciding sentence reduction. The decision clarified that even if the rules were ambiguous, the heading of the federal rule clarifies its limitations and pointed out that the rule is titled, "Reducing a Sentence *for* Substantial Assistance" (*Clawson*, p 536, italics in original). The court noted that as recently as 2001, the rule explicitly mandated that a district court's reduction of a defendant's sentence "reflect[s] a defendant's subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense" (*Clawson*, p 536). The court added that the emphasis of Rule 35(b) is on "substantial assistance" and concluded that there could be "troubling and potential consequences" of a broad interpretation of Rule 35(b). In addition, the court disagreed with Mr. Clawson that factors other than assistance may be considered when reducing a sentence. It concluded that, "when deciding whether to grant a Rule 35(b) motion, a district court may not consider any factor other than the defendant's substantial assistance to the government. Here it is clear that the district court did not adhere to this principle" (*Clawson*, p 537). The court also held that the mere possibility of a change in Mr. Clawson's ADHD treatment did not give rise to an Eighth Amendment violation, as outlined in *Estelle v. Gamble*, 429 U.S. 97 (1976).

Discussion

This case limits the grounds for Rule 35(b) sentence reductions to substantial cooperation with the government. In addition, Mr. Clawson attempted to rely on *Estelle v. Gamble*, wherein the court held that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment" (*Estelle*, p 104). Such deliberate indifference may be manifested by prison doctors, "in their response to the prisoners' needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed" (*Estelle*, pp 104–5). Mr. Clawson argued that the Bureau of Prisons "announc[ed] its intention to interfere with the regime of treatment that he had been prescribed by his government doctor" (*Clawson*, p 538). The court stated that he had read *Estelle* too broadly and that in the application of *Estelle* to a psychiatric context, the mere difference of opinion regarding an adequate course of treatment does not violate the Eighth Amendment. The court clarified that, in *Bowring v. Godwin*, 551 F.2d 44 (4th Cir. 1977), the appropriate treatment is deferred to sound medical judgment.

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Competency to Stand Trial and Right to Substitute Counsel

LaKeisha Watson, MD
Fellow in Forensic Psychiatry

Richard L. Frierson, MD
Professor of Psychiatry and Vice Chair for Education
Director, Forensic Psychiatry Fellowship

Department of Neuropsychiatry and Behavioral Science
University of South Carolina School of Medicine
Columbia, SC

Defendant's Competency and Right to Substitute Counsel When Purposefully Failing to Communicate With His Attorneys

In *United States v. Simpson*, 645 F.3d 300 (5th Cir. 2011), the Fifth Circuit Court of Appeals deter-