

## Sentencing Scenarios

### Superior Court Judges Conference

### Fall 2004

*You have been divided into small groups to discuss these scenarios..*

- 1. Select a person to lead the discussion. This person will be responsible for keeping the discussion focused on the topic, and ensuring that all participants have a chance to be heard.*
- 2. Give everyone time to read the scenario and determine the sentence he or she would impose. Then open the discussion, using the questions included with the scenarios.*
- 3. If a scenario does not state a fact that one or more participants believe is relevant, provide an assumed answer and proceed with the questions, remembering that in many of the cases in which you sentence, not all the needed information is provided. (For example if you are wondering if the defendant seemed genuinely contrite, make an assumption about whether he or she was, and proceed; it is helpful in that process to think about why and whether that is important to you in imposing a sentence.) As an aside, it is instructive to reflect on how you fill in those or other information gaps as you sentence offenders.*
- 4. Try to be brief and focused in your responses, and encourage all participants to talk about their sentences. One purpose of this exercise is to give everyone a chance to check out their own sentencing philosophy against a representative sample of their peers. That is not done effectively if everyone does not participate.*
- 5. Appoint a reporter to record the groups decisions. If there is a consensus, note that; if not, indicate in general terms the nature of the disagreement. Please return that report to Jessie or Jim. .*
- 6. If you have any questions, Jessie or Jim will be glad to help answer them.*

1. John Smith, a 24-year-old black male, is before you for sentencing. He has pleaded guilty to sale of cocaine, a Class G felony. He was arrested with 10 grams of cocaine on his body, after selling to an undercover agent in a housing project in one of North Carolina's major cities. Mr. Smith is unmarried and has two children by separate women. He has not supported them consistently, although he provided support on an intermittent basis. He has a criminal record—a DWI conviction when he was 18, and a felony conviction of cocaine possession, a Class I felony, when he was 21. He is currently unemployed, with an irregular work history as a house painter. He attended 11 years of high school. The local sentencing services program prepared a sentencing plan that contains a psychological assessment that finds that Mr. Smith has a substance abuse addiction and a learning disability that made it difficult for him to read effectively. The program recommends intensive probation, outpatient drug abuse treatment at a local treatment facility, staying away from his old friends, and attendance at the day reporting center for vocational training and the obtaining of a GED. The prosecutor argues that Mr. Smith is a drug dealer and that any treatment he needs will be provided by the Division of Prisons. Mr. Smith is not particularly well-dressed and he is not very

communicative in addressing the court when the plea was taken. He has no comments at the sentencing hearing. The agreement is that Mr. Smith will be sentenced in the presumptive range, if he receives an active sentence. Your sentence?

2. Mary Daniels, a 40-year-old white female, is before you for sentencing on a plea arrangement. Ms. Daniels, an employee in the local bank's information technology office, was charged with possession of non-prescribed Schedule II controlled substances, (hydrocodone and oxycodone) and financial identity fraud in which the victim was arrested (for forging prescriptions). Ms. Daniels was previously charged when she was 35 for illegal possession of hydrocodone, but the case was dismissed, and she completed a substance abuse treatment program. In this case, Ms. Daniels used information she obtained from bank records to obtain illegal prescriptions from several doctors in other cities, using names of bank customers and identifying information she obtained about those customers. The case was investigated when one of those customers was arrested for illegal obtaining of prescription drugs in another city. Ms. Daniels had prescriptions in many different drugstores as a result of her activities. The source of her drugs from other than those prescriptions is unknown.

Ms. Daniels has been addicted to these painkillers for nearly 7 years, following a long treatment for injuries received in an automobile accident. Ms. Daniels is not married, has a college degree and comes from a generally supportive family in another state. Her parents are educators and they appear with her at the hearing. She pleads to the Class G felony of financial identity fraud resulting in arrest of the victim and the accompanying charge of possession is dismissed. Sentencing is to be in the mitigated range.

Her attorney argues for a suspended sentence with intensive probation, drug treatment and restitution to the victim (who has suffered bad credit as a result of these activities). The prosecutor argues for an active sentence based on the harm to the victim and the deterrence value of an active sentence in these cases. The defendant is well-dressed and at the sentencing hearing is contrite and says she really wants to make amends for the harm she has caused and wants to deal with her addiction. Your sentence?

3. Johnny B. Goode, is a newly hired 24-year-old assistant football coach and physical ed teacher at a local public high school, hired after a successful career as a linebacker at a small North Carolina college. During the course of the season, he develops an attraction with a flirtatious, sexually active, popular 15-year-old cheerleader. Her father is a minister, but it common knowledge that she has a free spirit. He eventually has vaginal intercourse with her several times at a motel in another city. Through some emails discovered by her father, the sexual relationship is uncovered, and the father pressures the authorities to press charges. The coach is indicted for a single count of first degree statutory rape under G. S. 14-27.7A (a). Under a bill of information charging taking indecent liberties with a child, the coach pleads guilty. He has no record, placing him in an I/A block. The coach grew up in a similarly sized community an hour away. That

community rallies around him. He was an Eagle Scout, a good student, and has dozens of letters of good character from his old community and the college he attended. They appear to be genuine and sincere expressions of support. The cheerleader does not deny that she consented to the relationship and she professes an affection for the coach. She does not wish for him to be sentenced to prison. She has been and remains a good student. There is no evidence of any psychological damage to her from this relationship. The father and members of his large, local church think a message needs to be sent about this kind of behavior. The prosecutor says that sentencing should be whatever the court thinks is just. The minimum sentence under the mitigated range is 10 to 13, The presumed range minimum is 13 to 16. The aggravated range minimum is 16 to 20.

a. What is your sentence?

b. How would your sentence change if the cheerleader joined in her father's request for active time?

c. How would your sentence change if the cheerleader testified that she was really led into the relationship; that while she consented, she really didn't mean it and she believes the coach knew that he was pressuring her to have sex with him.

d. Would your sentence change if the coach was an African-American and the cheerleader was white? How? Would the location in the state where the crime occurs matter in this regard?

e. How would your sentence change if the victim was a consenting male, same age, same parental situation, who was commonly known by his friends (and his parents although they did not openly talk about it in the community) to be gay, and the defendant was a popular, highly respected librarian at the high school, aged 30? Assume that the sex act involved oral sex, and that the defendant generally was known to be a homosexual, although quietly so and with strong community ties at a local church and with no record or any indication of any similar previous activity. He has the same quality and amount of character references, and the victim does not want an active sentence, although his father does.

f. In which of these situations, if any, is the defendant the most blameworthy?

4. Smith Thompson is a 44-year-old small businessman. He runs a construction company that has done reasonably well. He employs 25 people. He is married, happily, and has two children, ages 17 and 15. On a Friday night, Mr. Thompson went out to celebrate with his management staff upon hearing that his company had won a significant contract in the renovation of the local hospital. Mr. Thompson had too much too drink. On his way home, on a two-way rural road, he swerved across the center line and collided with a vehicle driven by a high school senior and his girlfriend. Mr. Thompson's large construction vehicle caused significant damage to the teenagers' Cooper, and they were

both killed. Mr. Thompson called the police and an ambulance and when the emergency vehicles arrived, Mr. Thompson was arrested for involuntary manslaughter. He submitted to an intoxilizer test and had an alcohol concentration of 0.12. Accident reconstruction evidence suggests that he was driving 60 mph in a 45 mph zone at the time of the collision. He has a previous impaired driving conviction when he was 29, but no other traffic violations, other than an improper equipment reduction from a speeding charge five years earlier. He pleads guilty to one count of involuntary manslaughter. Sentencing is in the court's discretion.

There is considerable community interest in this case. The victims were popular school leaders, and there is a strong MADD chapter in the area, which believes that a strong signal of deterrence is needed in the community. The parents of one victim are strongly arguing for the maximum punishment, while the other say they don't believe a prison sentence will serve any useful purpose. Your sentence?

5. Sidney Johnstone Miller, III, was convicted of possession of cocaine in his junior year at an elite private college in North Carolina. He is from Long Island, New York, but has been on probation for seven months on the cocaine possession charge. He was fined \$1000 and that was paid the day of his conviction. He has now failed two drug tests in the past month. His private treatment provider, while acknowledging the failure, testifies that he believes Sidney is making progress in combating his addiction. He comes from a well-to-do family and his family has been very supportive, providing him access to highly regarded inpatient drug treatment programs. He is no longer enrolled in the college and is now living in an apartment in Charlotte, and hopes to reenroll in college next fall. He is employed in an insurance company as a courier, having been helped by family contacts in locating the job. He is single and 23 years old. His grades have been average, he was an active member of a fraternity, and psychological tests reveal no underlying mental illnesses. The probation officer has him back in court for a review, and is recommending at least a 30-day split sentence in response to the drug failures.

a. Do you revoke his probation? If not, do you modify it? How?

b. Suppose the defendant is a 19-year-old African-American who was convicted of possession of crack cocaine. Same record on probation, but defendant has little family support, still owes a \$300 fine, and his public drug treatment provider says he's making progress. He has no current job, and is living with his grandmother. He is making some progress toward obtaining a GED.

Do you revoke his probation? Why? If not, do you modify it? How?

c. Which of the differences between the two defendants affect sentencing decisions? Why?

6. In June 2004, Fred Cheek received a 12 to 14 month sentence for sale of cocaine and was placed on intensive and supervised probation. It is alleged that within three months of being placed on probation he violated his probation. The violations include missing 5 office visits, violating his curfew ten times, testing positive for cocaine, leaving his place of residence, and failing to submit to substance abuse treatment. He is 42 years old and has a 9<sup>th</sup> grade education. Three years ago he was convicted of possession with intent to sell cocaine. He was convicted of assault on a female 18 years ago. For the cocaine offense he spent a year in prison.

Cheek is on SSI disability for a bullet in his back 25 years ago. He is schizophrenic. He was living in an old trailer behind a rest home, but he was made to move from there. He is described as having no permanent home. He has problems with transportation. The probation officer lost contact with the defendant for almost a month. He did begin substance abuse treatment at the local Day Reporting Center but did not complete the treatment. He has substance abuse issues with both alcohol and cocaine. He has his prescriptions for medication filled regularly, but does not take the medication regularly. When he does not take his medication he hears voices. He has never received any long-term treatment for schizophrenia. He has been in jail ten days when he is brought before the Court for his probation violation hearing. The defendant's court appointed attorney argues that no useful purpose is served by using a prison bed for Mr. Cheek, and that he should be given another chance to receive treatment at the DRC. The prosecutor argues that probation should be revoked. Your sentence?

7. Homer Snipes is a white male, aged 34. He is a native of the rural county in which the crime occurs. Homer drives a 1992 Ford pickup truck. He is stopped by a deputy sheriff for speeding 50 mph in a 35 mph zone, around 1:00 a.m. He is on his way home from a local pool hall. The male, African-American deputy who stops him notices that he has an odor of beer about his person. He has a dog in the back of his pickup. In the floorboard on the passenger side of the pickup truck is a 16-gauge shotgun which has a barrel of less than 18 inches. Prominently displayed on the rear window of his pickup truck is a Confederate flag decal. Another sticker proclaims, "When guns are outlawed, only outlaws will have guns." Also prominently displayed near the Confederate Battle Flag decal is a bumper sticker "Heritage not Hate." The deputy points out that Mr. Snipes has what appears to be an illegal weapon in the floor of his truck. Mr. Snipes volunteers that the shotgun was a gift from his grandfather, that a significant length of the barrel was damaged, so he himself shortened the barrel, in an effort to make the shotgun useable. Mr. Snipes says now he uses the shotgun to shoot snakes. The deputy charges Mr. Snipes

with possession of a sawed off shotgun in violation of G. S. 14-288.8, a Class F felony. Mr. Snipes has three points arising from three misdemeanors, misrepresentation to obtain Employment Security benefits, DWI two years ago, and assault on a female. He is prior record level II. This places Mr. Snipes in an I/A block. He has no other record. The officer testifies that Mr. Snipes was cooperative (physically), but he “mouthed off” a bit upon being arrested.

a. What sentence? Why?

b. Assume the same facts, but the record was for assault by pointing a gun. Would your sentence change?

c. Assume the same basic facts, but the defendant is Muslim, and is the son of Lebanese immigrants. He is from New Jersey, and is visiting his uncle, who owns a convenience store in a major NC city. His explanation for the gun is that he needs it to protect himself from robbery while he transports the proceeds from his uncle’s convenience store to the night deposit at the bank. The defendant has a conviction of impaired driving in New Jersey and a conviction for assault on a female, three years ago, (a girlfriend) while on another visit to his uncle’s. He is 28 years old. Instead of the pro gun stickers, he mostly talks about his love of Allah and the imperialism of the American government in its approach to the Middle East. He is not very polite to the female arresting officer in his comments, which include some suggestions that females should not be doing police work. What is your sentence?

d. Is one of these defendants more likely to be dangerous in the future than the other? How does that affect the sentence? What information helps you reach that conclusion?