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HOW LONG IS TOO LONG?

By **MICHAEL HINKELMAN**

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..AFTER HE HELPED murder beloved insurance salesman David Scafetta in April 2004, Kareem Andrews and his two accomplices went on a shopping spree.

They frittered away thousands of dollars on clothes and a futon.

Last November, Andrews, 22, paid for his crime. He pleaded guilty to third-degree murder in Common Pleas Court. He was sentenced to 25 to 50 years in state prison; he'll be eligible for parole in 23 years.

Then there's the case of Jamal Ezell, 26, who never murdered anyone.

Ezell, found guilty of committing six robberies during a two-week spree in 2002, was sentenced in federal court in Philadelphia last month.

He got 132 years in federal prison. He has no chance for parole.

Welcome to the harsh world of federal mandatory-minimum sentences.

An Ezell pal, who convinced him to go on the spree, said one of the businesses would be "easy to rob," according to a statement Ezell gave police.

But Ezell brandished a gun during the stickups, which meant he could be prosecuted in federal court under the "Project Safe Neighborhoods" program.

Federal authorities in Philadelphia use the program to fight the scourge of gun crimes in the city. It allows some gun crimes to be prosecuted under the Hobbs Act in federal court, where mandatory sentences spell out exactly how much time judges must give for each crime.

But Ezell's 132-year sentence also points out just how much these mandatory minimums cost - both convict and taxpayers.

If Ezell lives another 50 years, adjusting for inflation, taxpayers will shell out \$1.2 million to house him.

Ezell appealed his sentence to U.S. District Judge Jan E. DuBois. DuBois rejected the appeal, but the judge wrote in an 18-page sentencing memorandum on March 3 that the sentence was "unduly harsh."

That memorandum has rekindled a debate among jurists, legal scholars, criminal defense attorneys and prosecutors about the wisdom of mandatory minimums.

At least two current U.S. Supreme Court Justices - Anthony Kennedy and Stephen Breyer - have called mandatory minimum

sentences unfair, harsh and, in many cases, unjust.

The issue dates from a 1968 federal gun law that requires federal judges to mete out mandatory minimum sentences if firearms are used while committing a violent crime.

The mandatory sentencing provisions were added as an amendment on the House floor. The congressman who sponsored the amendment said its purpose was to persuade somebody tempted to use a gun in the commission of a crime to leave it at home.

Congress toughened the sentencing requirements in 1984 in the wake of several U.S. Supreme Court decisions.

But do mandatory minimums achieve what Congress intended?

A national expert on criminal sentencing says they do not.

At their most basic level, mandatory minimum sentences are a "bad idea," said Paul H. Robinson, a University of Pennsylvania law professor and a member of the U.S. Sentencing Reform Commission in 1984.

He contends the impetus for mandatory minimums comes from "politicians who don't trust crazy, soft-on-crime judges" to hand out stiff-enough prison sentences to armed thugs.

Indeed, just last month the U.S. House passed a bill calling for new mandatory minimum sentences for violent criminals.

Criminal defense attorneys say mandatory minimums don't take into account each defendant's particular circumstances.

"You don't use an elephant gun to shoot a gnat," said Christopher Warren, Ezell's attorney, noting that nobody was killed or injured in any of the robberies.

The feds do reach for this particular weapon a lot. According to statistics compiled by the U.S. Attorney's Office for the Eastern District of Pennsylvania, indictments for Hobbs Act armed robberies with mandatory minimum sentences almost tripled in the Philadelphia region from 2000 through '04, before dropping off a bit last year.

But Robinson warned that crackdowns don't serve to deter robberies with guns.

"Manipulating a sentencing rule in order to get people to act differently just doesn't work," he said.

"A lot of criminals have no idea what the law is," he said. "Even if they do, many of them are not rational calculators. And, for those who are rational, most of these folks don't think they're ever going to be caught."

Robert K. Reed, deputy chief of the criminal division for the U.S. Attorney's Office here, disagrees.

Reed said his office, as part of its community outreach, tries to educate the public about the law.

He acknowledged sentences can be harsh - the average sentence for Hobbs Act armed robberies in the region since 1999, when Project Safe Neighborhoods began, is more than 25.6 years - but said neighborhoods victimized by gun violence are safer as a result.

Without mandatory minimums, he said, federal prosecutors would never get defendants charged with violent crimes to cooperate with the feds.

"When defendants are faced with spending 40 or 60 years in prison, that gives us the leverage that then causes these defendants to decide it's better to cooperate," he said.

Reed said decisions by defendants to cooperate with prosecutors has enabled the feds to crack 100 murder cases in the region in recent years, most of them in Philadelphia.

"If we didn't have mandatory minimums, we wouldn't be as successful as we are. It's a critical component to stopping violent crime," Reed said.

Even Robinson, a critic of mandatory minimums, conceded that mandatory minimums do take bad guys off the streets.

Nevertheless, DuBois said Ezell's sentence was "far in excess" of what was required to deter further criminal behavior by Ezell, protect the public and promote respect for the law.

DuBois wrote: "The government has not provided a single convincing reason why a sentence under the sentencing guidelines would not achieve all the goals of sentencing in this case."

Under existing federal sentencing guidelines, where no mandatory minimum is required, had Ezell been charged with the robberies - but not the aiding and abetting counts involving a firearm - he probably would have faced a sentence of 14 to 17 ½ years in prison, DuBois said in a footnote to his memorandum.

DuBois "reluctantly" concluded that none of Ezell's arguments constituted grounds for reducing the 132-year prison sentence.

Reed said had Ezell chosen to cooperate with prosecutors, his sentence would have been reduced.

Indeed, Warren said he could have probably plea-bargained to two counts of armed Hobbs Act robbery and faced a mandatory minimum sentence of 32 years.

But he didn't.

"If you're 26 and you're looking at spending the next 32 years in prison, well, he decided he would take his chances at trial," Warren said.

Warren also said Ezell is "generally distrustful" of government, which may explain why he chose not to cooperate.



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