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Supreme Court to Revisit Federal Sentencing Issues

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WASHINGTON, Nov. 3 — For the nearly two years since the Supreme Court made the federal sentencing guidelines advisory rather than binding, the criminal justice system has been waiting anxiously for the justices to explain what “advisory” actually means and how much discretion federal judges really have.

On Friday, the court took the first step toward answering those important questions. From dozens of pending appeals, the justices selected two cases to resolve two of the most pressing issues in federal sentencing. Both issues have divided the lower federal courts.

The first is whether a sentence that is within the range of the formerly mandatory guidelines should be presumed to be reasonable, a presumption that effectively insulates the sentence from challenge on appeal. The second issue is what a federal judge has to do to justify a sentence that is substantially shorter than the lowest sentence the guidelines provide.

The case that made the sentencing guidelines advisory, *United States v. Booker*, was extremely closely fought, with shifting coalitions of justices addressing the constitutionality of the guidelines and the permissible remedy for the problem. Of the five justices who supported the remedy of making the guidelines advisory, two are no longer on the court, Sandra Day O’Connor and [William H. Rehnquist](#), then the chief justice.

What approach their replacements, Justice [Samuel A. Alito Jr.](#) and Chief Justice [John G. Roberts Jr.](#), will take toward the court’s current doctrine on the respective roles of judges and juries remains to be seen. While there was no suggestion in the court’s action on Friday that the *Booker* decision itself would be reconsidered, there remains much room for debate over how it should be applied.

Each of the appeals was brought to the Supreme Court by a federal public defender’s office. The defendant in the first case, from North Carolina, is a 57-year-old retired marine named Victor A. Rita Jr., who was convicted of making false statements in connection with a federal investigation into the sale of kits for making machine guns.

While Mr. Rita's sentence, 33 months, was within the range provided by the sentencing guidelines, he argued on appeal to the United States Court of Appeals for the Fourth Circuit that the sentence was unreasonably long, given his poor health and unblemished record of federal service, both as a marine and in two civilian agencies.

But the Fourth Circuit, which is based in Richmond, Va., and includes North Carolina, is one of the federal circuits that have adopted a presumption of reasonableness for sentences within the guidelines range. The appeals court consequently rejected his appeal in a brief unpublished opinion.

In the Supreme Court appeal, *Rita v. United States*, No. 06-5754, the public defender's office in Greensboro, N.C., is arguing that, as a practical matter, the presumption of reasonableness has the effect of making the guidelines mandatory once again, contrary to the Supreme Court's ruling in the Booker case.

In that case, decided in January 2005, the court ruled that the sentencing guidelines were unconstitutional because they gave judges the responsibility to make factual determinations on which defendants have a right to trial by jury. The court then held that the problem could be cured by making the guidelines advisory rather than mandatory, setting up a system that required judges to "consider guidelines ranges" under a general requirement of "reasonableness."

In accepting Mr. Rita's appeal, the Supreme Court said it would decide whether it was "consistent with *United States v. Booker* to accord a presumption of reasonableness to within-guidelines sentences."

The defendant in the second case the court accepted on Friday is a 21-year-old first offender, Mario Claiborne, who was convicted in Federal District Court in St. Louis of possessing a small quantity of crack cocaine. Mr. Claiborne's lawyer persuaded the trial judge to impose a sentence of only 15 months, sharply lower than the guidelines range of 37 to 46 months.

The United States Court of Appeals for the Eighth Circuit, also in St. Louis, overturned the sentence and ordered resentencing, which has not yet taken place. The Eighth Circuit is among the appeals courts that regard deviations from the guidelines as inherently dubious, requiring special justification.

Noting that Mr. Claiborne had received a sentence that was an "extraordinary" 60 percent lower than the low end of the guidelines range, the appeals court said that "an extraordinary reduction must be supported by extraordinary circumstances."

Mr. Claiborne's Supreme Court appeal, *Claiborne v. United States*, No. 06-5618, thus presents the other side of the coin: not whether it is presumptively reasonable to issue a sentence within the guidelines range, but whether it is presumptively unreasonable not to do so.

In accepting the case, the Supreme Court said it would decide whether it was "consistent with *United*

States v. Booker to require that a sentence which constitutes a substantial variance from the guidelines be justified by extraordinary circumstances.”

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 - [Health](#)
 - [Sports](#)
 - [Opinion](#)
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 - [Job Market](#)
 - [Real Estate](#)
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