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Supreme Court to Review Judges' Discretion in Cocaine Sentences

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The Supreme Court announced yesterday that it will hear a case on whether judges can consider the alleged unfairness of a federal law regarding sentences for selling crack and powder cocaine when deciding on jail time for such crimes.

The justices will not rule on the constitutionality of the 21-year-old federal law, which gives first-time offenders convicted of selling five grams of crack cocaine the same five-year mandatory prison sentence as dealers of 500 grams of powder cocaine. Still, given the opposition to the crack sentencing law among many federal judges, the court's ruling could have a significant national impact.

The statute, adopted in 1986 as part of a federal clampdown on drug use after the death of [University of Maryland](#) basketball star Len Bias from a cocaine overdose, has also come under fire from members of Congress, civil rights organizations and the U.S. Sentencing Commission.

The critics frequently cite racial disparities; in 2006, 81.8 percent of those sentenced in federal court for dealing crack were black, whereas only 27 percent of those sentenced for dealing powder cocaine were black, according to the U.S. Sentencing Commission. Hispanics accounted for the majority -- 57.5 percent -- of powder cocaine convictions.

But efforts in Congress to change the law have failed; both the Clinton and [George W. Bush](#)

administrations opposed change. The Bush administration urged the court not to hear the appeal it accepted yesterday.

The court nevertheless seemed interested in the case of Derrick Kimbrough, which is similar to many others. In January 2005, Kimbrough pleaded guilty to cocaine trafficking and weapons charges in a [Norfolk](#) federal district court.

Kimbrough seemed to be on his way to between 19 and 22 years behind bars, the sentence called for under federal sentencing guidelines and requested by the [U.S.](#) attorney.

But Judge Raymond A. Jackson gave Kimbrough 15 years in prison. Jackson noted that Kimbrough, who is black, had been in possession of both powder and crack cocaine but that it was the latter that boosted his sentence beyond 15 years.

The judge cited a 2002 report by the U.S. Sentencing Commission that found that the law exaggerates the harmfulness of crack compared with that of powder cocaine, applies mostly to low-level offenders and hits minorities hardest.

The Supreme Court will decide whether Jackson's reliance on those findings was proper.

Last year, a three-judge panel of the [U.S. Court of Appeals](#) for the 4th Circuit, based in [Richmond](#), overruled Jackson.

The unanimous ruling noted that a 2005 Supreme Court decision made the federal sentencing guidelines advisory and permitted judges to issue sentences at variance with them as long as the sentences remain "reasonable."

But the 4th Circuit said the 2005 decision does not give district courts the freedom to avoid the legal minimum sentence for dealing crack based on concerns about the disparate treatment of selling crack and powder cocaine. They are still bound by federal law, the 4th Circuit ruled.

The case is *Kimbrough v. U.S.*, No. 06-6330. The court will hear arguments in the fall, and a decision is expected by July 2008.

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