

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States v. Mix

457 F.3d 906 (9th Cir. 2006) · Decided March 30, 2006

SUMMARY

The Ninth Circuit affirmed Tony Mix’s life sentence for kidnapping, aggravated sexual abuse, and assault committed on the Navajo Indian Reservation. The court held that the district court properly calculated and considered the advisory Sentencing Guidelines, considered the factors under 18 U.S.C. § 3553(a), and reasonably imposed a non-Guidelines sentence. It also rejected Mix’s Fifth Amendment due process and Sixth Amendment jury-factfinding challenges to the application of United States v. Booker.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Alarcón, Circuit Judge; Alarcón; Holland; McKeown
JURISDICTION	Federal
DECIDED	March 30, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the sentence imposed on resentencing after the Ninth Circuit previously affirmed his convictions but reversed the sentence in part and remanded for resentencing.
STANDARD OF REVIEW	The court reviewed the interpretation of the Sentencing Guidelines de novo, the application of the Guidelines to the facts for abuse of discretion, factual findings for clear error, and the resulting sentence for reasonableness in light of 18 U.S.C. § 3553(a).
PRECEDENTIAL VALUE	published and precedential
PARTIES	Tony Mix v. United States

TOPICS

- sentencing
- sentencing guidelines
- criminal procedure
- due process
- sixth amendment

PRACTICE AREAS

- criminal law
- federal sentencing
- constitutional criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court correctly calculated and applied the Sentencing Guidelines after *Booker*.
2. Whether the life sentence was unreasonable because the district court failed to consider mitigating factors under 18 U.S.C. § 3553(a)(1).
3. Whether application of *Booker* to Mix's resentencing violated the Due Process Clause of the Fifth Amendment or the Sixth Amendment right to have a jury find sentence-enhancing facts.

HOLDINGS

1. The district court properly considered the applicable Guidelines because it calculated the Guidelines range without imposing an upward departure under U.S.S.G. § 5K2.21 and then treated the Guidelines as advisory when selecting a non-Guidelines sentence.
2. The life sentence was reasonable because the district court adequately considered the applicable § 3553(a) factors and sufficiently explained why a sentence outside the Guidelines range was warranted.
3. Applying *Booker* to Mix's case on direct review did not violate the Fifth Amendment Due Process Clause or ex post facto principles.
4. The district court did not violate the Sixth Amendment by considering uncharged conduct and making findings used to determine the advisory Guidelines range and impose a sentence within the statutory maximum.

KEY QUOTATIONS

“In summary, it is both important and legally necessary under 18 U.S.C. § 3553(a) and under Booker that the district court conduct parallel analyses — first employing the Guidelines, and then considering non-guideline sentencing factors under § 3553(a).” (913)

“Where, as here, the district court determines that the Guidelines do not adequately take account of § 3553(a) sentencing factors, the district court, may, in furtherance of Booker, impose a sentence outside and apart from the Guidelines.” (913-14)

FACTUAL BACKGROUND

Mix committed repeated violent acts of sexual and physical abuse against his live-in companion between 1998 and 2000, causing severe physical injuries. Two other women also testified that Mix had physically and sexually abused them. The district court considered the seriousness of the offenses, Mix's lengthy history of violence toward women, the impact on the victims, and psychological evaluation evidence when imposing life sentences after resentencing.

PROCEDURAL HISTORY

Mix was convicted in the district court of two counts of kidnapping, five counts of aggravated sexual abuse, and two counts of assault with a deadly weapon. On the initial appeal, the Ninth Circuit affirmed the convictions but reversed the sentence in part because the district court applied U.S.S.G. § 5K2.21 to conduct occurring before that guideline became effective. On remand and after *Booker*, the district court imposed concurrent life sentences

on the kidnapping and aggravated-sexual-abuse counts and consecutive 120-month sentences on the assault counts. Mix appealed the resentencing judgment, and the Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Mix, 450 F.3d 375 (9th Cir. 2006)
- United States v. Mix, 77 Fed. Appx. 986, 990 (9th Cir. 2003)
- United States v. Booker, 543 U.S. 220, 259-60, 264, 267 (2005)
- United States v. Cantrell, 433 F.3d 1269, 1279-81 (9th Cir. 2006)
- United States v. Crawford, 407 F.3d 1174, 1178-79 (11th Cir. 2005)
- United States v. Smith, 424 F.3d 992, 1015 (9th Cir. 2005)
- United States v. George, 403 F.3d 470, 472-73 (7th Cir. 2005)
- United States v. Simpson, 430 F.3d 1177, 1186 (D.C. Cir. 2005)
- United States v. Ayers, 428 F.3d 312, 315 (D.C. Cir. 2005)
- United States v. Smith, 440 F.3d 704 (5th Cir. 2006)
- United States v. Dean, 414 F.3d 725, 729 (7th Cir. 2005)
- United States v. Dupas, 419 F.3d 916, 919-21 (9th Cir. 2005)
- Bouie v. City of Columbia, 378 U.S. 347, 353-55 (1964)
- United States v. Rines, 419 F.3d 1104, 1106-07 (10th Cir. 2005)
- Rogers v. Tennessee, 532 U.S. 451, 462 (2001)
- United States v. Lata, 415 F.3d 107, 110-11 (1st Cir. 2005)
- United States v. Jamison, 416 F.3d 538, 539 (7th Cir. 2005)
- United States v. Duncan, 400 F.3d 1297, 1307 (11th Cir. 2005)

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