

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Curtis Copeland

United States v. Curtis Copeland, 902 F.2d 1046 (2d Cir. 1990) · No. No. 915, Docket 89-1495 · Decided April 23, 1990

SUMMARY

The Second Circuit held that under Sentencing Guidelines §1B1.3, a district court may consider quantities of drugs not charged in the count of conviction as "relevant conduct" if they were part of the same course of conduct or common scheme or plan. The court affirmed the inclusion of 63 vials of crack in calculating the base offense level for a defendant who pleaded guilty to attempted distribution of only three vials, where the defendant acted as a "steerer" directing buyers to sellers and was prepared to benefit from sales of the entire inventory. The court also rejected a due process challenge, noting the defendant had notice and an opportunity to respond to the information. This case illustrates "real offense" sentencing in narcotics cases and the broad scope of relevant conduct under the Guidelines.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Kearse; Cardamone; Mahoney
JURISDICTION	Federal
DECIDED	April 23, 1990
DOCKET	No. 915, Docket 89-1495
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from conviction after guilty plea.
STANDARD OF REVIEW	Factual findings reviewed for clear error; application of guidelines to facts reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Curtis Copeland v. United States

TOPICS

- criminal procedure
- appellate procedure
- constitutional law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred in including the 63 vials of cocaine as relevant conduct when calculating Copeland's base offense level under the Sentencing Guidelines.
2. Whether consideration of the 63 vials violated Copeland's right to due process.

HOLDINGS

1. The district court properly included the 63 vials as relevant conduct because they were part of the same course of conduct or common scheme or plan as the offense of conviction.
2. The consideration did not violate due process because Copeland had notice of the government's intent to seek inclusion of the 63 vials, an opportunity to respond, and was offered the opportunity to withdraw his plea.

KEY QUOTATIONS

"I perceive Mr. Copeland to have acted as a steerer operating, shall we say, on a commission basis; that is he would receive drugs, to the extent he was of assistance to the other two defendants, who I clearly regard as more culpable."

"Without 'steerers,' buyers would either find it difficult to locate sellers or sellers would have to risk exposure to public view."

"The Due Process Clause does not restrict the court with respect to the type of information it may consider for purposes of sentencing."

FACTUAL BACKGROUND

On April 26, 1989, an undercover agent approached Curtis Copeland in a theatre restroom and asked if he was selling crack. Copeland led the agent to the balcony where codefendants Darrell Whaley and Jerome Jackson were sitting. Copeland told the agent to sit down and told the codefendants the agent was looking to buy crack. Jackson accepted \$15 from the agent, Whaley handed three vials of crack to the agent, but the transaction was rescinded when the agent refused to smoke a vial. Copeland then escorted the agent out. Later, other agents arrested Jackson and Whaley, finding 3 vials of crack on Jackson, \$360 on Whaley, and 63 vials of cocaine under a seat. All 66 vials were identical. Copeland was arrested downstairs and admitted taking the agent to purchase crack, hoping for a tip or share of the crack. He had a crack pipe. Copeland pleaded guilty to attempted distribution of the three vials. At sentencing, the district court found that Copeland acted as a 'steerer' for the codefendants, making him responsible for the entire 63 vials as relevant conduct. The court sentenced him to 12 months after downward departure.

PROCEDURAL HISTORY

Copeland was indicted with Whaley and Jackson on charges of distributing three vials of crack; Whaley and Jackson were also charged with possessing 63 vials with intent to distribute. Copeland entered into a cooperation agreement and pleaded guilty to a superseding information charging him with attempted distribution of the three

vials. The probation department calculated a Guidelines range of 51-63 months, including the 63 vials. Copeland objected. The district court held a sentencing hearing, found that the 63 vials were relevant conduct, and sentenced Copeland to 12 months after downward departure for minor role and cooperation. Copeland appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Fernandez, 877 F.2d 1138 (2d Cir. 1989)
- United States v. Guerrero, 863 F.2d 245 (2d Cir. 1988)
- United States v. Blanco, 888 F.2d 907 (1st Cir. 1989)
- United States v. Bedoya, 878 F.2d 73 (2d Cir. 1989)
- United States v. Paulino, 873 F.2d 23 (2d Cir. 1989)
- United States v. Colon, 884 F.2d 1550 (2d Cir. 1989)
- Williams v. New York, 337 U.S. 241 (1949)
- Townsend v. Burke, 334 U.S. 736 (1948)
- United States v. Alexander, 860 F.2d 508 (2d Cir. 1988)
- United States v. Romano, 825 F.2d 725 (2d Cir. 1987)
- United States v. Guerra, 888 F.2d 247 (2d Cir. 1989)