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Recent Developments: United States v. Watts: Federal Judges May Use Convicted Defendant's Related but Acquitted Conduct in Deciding Defendant's Sentence

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United States v. Watts

In an unsigned opinion, the United States Supreme Court affirmed in *United States v. Watts*, 117 S. Ct. 633 (1997) (per curiam), that federal judges may use convicted defendants' related but acquitted conduct in deciding their sentences, provided that the conduct is established by a preponderance of the evidence. In so holding, the Court eliminated a discrepancy between the Ninth Circuit and the other federal circuits when it found neither a federal statutory nor a constitutional bar against consideration of this type of conduct. As a result, judges may evaluate any related acquitted charges of the defendant in determining sentences.

The Government combined two similar cases, *United States v. Watts*, 67 F.3d 790 (9th Cir. 1995), and *United States v. Putra*, 78 F.3d 1386 (9th Cir. 1996), in its petition for writ of certiorari to the United States Supreme Court. In the first case, Vernon Watts was charged with possession of cocaine with intent to distribute and use of a deadly weapon in furtherance of a drug trafficking crime. At trial, he was convicted on the drug charge but acquitted on the gun charge. Upon sentencing, the United States District Court for the Eastern District of California found the gun charge related to the drug charge by a preponderance of the evidence. Accordingly, it increased Watts's sentence by two points pursuant to the United States Sentencing Guideline

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Manual. On appeal, the United States Court of Appeals for the Ninth Circuit set aside the sentence, holding that the district court erroneously connected the gun charge with the higher sentence.

In the second case, Cheryl Putra was charged with two counts of aiding and abetting possession with intent to distribute cocaine. Putra was convicted on one count at trial. The United States District Court for the District of Hawaii found, by a preponderance of the evidence, that Putra's involvement in the second charge warranted an upward departure under the United States Sentencing Guidelines Manual, resulting in a stronger punishment. On appeal, the United States Court of Appeals for the Ninth Circuit reversed the sentence, holding that the district court should not have considered the acquitted charge, since the combined charge would punish Putra for acquitted conduct. The petition for writ of certiorari followed.

Beginning its analysis, the Court examined federal statutory

law enacted prior to the Sentencing Guidelines. It stated that a court has enormous discretion to examine all relevant factors in the sentencing process. *Watts*, 117 S. Ct. at 635 (discussing 18 U.S.C. § 3661). The Court reinforced its opinion by pointing to a substantial body of case law holding that prior conduct "[h]ighly relevant — if not essential — to the [the judge's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." *Id.* (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)). The Court also criticized the departure of the court of appeals from "well established" precedent. *Id.* (quoting *United States v. Donelson*, 695 F.2d 583, 590 (D.C. Cir. 1982)).

The Court next turned its attention toward evaluating the meaning and intent of the United States Sentencing Guidelines Manual and Commission. *Id.* The Court explained that provisions in the Guidelines closely mimic federal statutory law in that they also afford broad discretion to sentencing courts to "consider, without limitation, any information concerning the background, character and conduct of the defendant." *Id.* at 635-36 (quoting U.S. SENTENCING GUIDELINES MANUAL § 1B1.4). Specifically, the Court noted that the Guidelines directly permit courts to weigh all relevant conduct flowing from the facts and

circumstances of the convicted charge, “whether or not it resulted in a conviction.” *Id.* at 635-36 (citing U.S. SENTENCING GUIDELINES MANUAL §§ 1B1.3, 1B1.3(a)(2), cmt., background.). Finally, the Court determined that Congress intended the Guidelines to “at a minimum . . . provide additional penalties when defendants are convicted of multiple offenses.” *Id.* at 636 (citing 28 U.S.C. § 994(1)).

In reversing the court of appeals, the Court rejected the argument that heightened sentences penalize defendants for acquitted conduct. *Id.* at 636. The Court instead pointed to case law holding that increased sentences punish criminals for “the manner in which [they] committed the crime of conviction.” *Id.* (citing *Witte v. United States*, 115 S. Ct. 2199, 2207-08 (1995)). In addition, the Court rejected the argument that a verdict of not guilty denotes the “rejection” of a set of facts by the jury which precludes the facts from use by the sentencing court. *Id.* at 637 (citing *United States v. Brady*, 928 F.2d 844, 851 (9th Cir. 1991), *abrogated on other grounds*, *Nichols v. United States*, 511 U.S. 738 (1994)). In distinguishing the terms “acquittal” and “innocent,” the Court explained that a verdict of not guilty means only that the Government’s evidence failed to meet proof beyond a reasonable doubt. Thus, a finding of not guilty does not mean that the jury rejected the given set of facts. *Id.* (citing *United States v. One*

Assortment of 89 Firearms, 465 U.S. 354, 361 (1984)). In sum, the Court concluded that a sentencing court may properly use a defendant’s acquitted conduct to elevate the defendant’s respective sentence, so long as the conduct is proven by a preponderance of the evidence. *Id.*

In his concurring opinion, Justice Breyer conceded that the law permits judges to consider related charges of which the defendant was acquitted when sentencing a convicted defendant. *Id.* at 638. Nevertheless, he added that the Sentencing Commission holds the power to pass a provision eliminating this information from being considered by sentencing judges. *Id.* at 638-39. In a separate concurring opinion, Justice Scalia refuted Justice Breyer’s position, maintaining that the power to prohibit consideration of this acquitted conduct rests solely with Congress. *Id.* at 638.

In a lengthy dissent, Justice Stevens noted that the purpose of 18 U.S.C. § 3661, enacted before the Guidelines, was to allow the judge to consider relevant conduct of the defendant only in areas where a judge had discretion to rule. *Id.* at 639. He maintained that, since the imposition of the Guidelines, judicial discretion has been substantially eliminated. *Id.* Moreover, the statute fails to clarify the relative weight to be afforded this evidence. *Id.* In Part II of his dissent, Justice Stevens criticized the majority for their failure to conduct oral argument on the issues given the seriousness of

increased deprivation of citizens’ liberty. *Id.* at 641. In Part III, he dismissed the case law relied upon by the majority as unpersuasive, since these cases: (1) did not directly address the issue of burden of proof in sentencing cases; (2) were factually distinguishable; and (3) were narrow in their application. *Id.* at 642-43. For these reasons, Justice Stevens concluded that judges should only be permitted to consider those charges that have been proved beyond a reasonable doubt in deciding sentences for convicted defendants. *Id.* at 643-44.

In a separate dissenting opinion, Justice Kennedy briefly conceded that the opinion of the ninth circuit could have been reversed solely because it ignored the existing legal precedent of every other circuit. *Id.* at 644. Next, he criticized the majority for their refusal to distinguish uncharged conduct from acquitted related conduct. *Id.* He also noted that the concurring opinions and Justice Stevens’s dissent amplify the notion that the role of the Sentencing Commission is unclear. *Id.* Thus, Justice Kennedy maintained that the majority should have heard oral argument on this case and their failure to do so precluded him from joining them in their decision. *Id.*

In *United States v. Watts*, the United States Supreme Court reaffirmed that the federal judiciary possesses enormous discretion to consider all relevant conduct in the sentencing process. So long as there exists the requisite proof by

preponderance of the evidence, federal judges are free to consider any and all conduct arising out of a common scheme of criminality for which the defendant has been convicted. No longer may a defen-

dant be shielded by an acquittal on a separate but related charge. This decision may reflect the Court's response to public pressure to curb crime and punish criminals. Thus, provided there is a judicial finding

of a preponderance of the evidence, judges may in effect disregard an acquittal and use the charges as a vehicle to lengthen defendants' sentences.



