

## Recent crack cocaine ruling brings early Christmas present

by *Marc\_H.\_Morial*

Christmas may have come early this year for the families of thousands of federal inmates with crack cocaine convictions, thanks to recent actions by the U.S. Supreme Court, President George W. Bush and the U.S. Sentencing Commission.

Back in the 1980s at the height of the crack epidemic in urban America, our nation's leaders labored under the misconception that the less expensive form of cocaine was much more addictive than its powder form, based on the testimony of an "expert" government witness. Distorted visions of crack babies overtaking inner cities danced in their heads, much to the detriment of fair and reasonable public policy.

As a result, Congress mandated harsher sentences for possession and distribution of crack. Under the Anti-Drug Abuse Act of 1986, those convicted of possessing 50 grams of the crack form of cocaine faced the same time behind bars as those convicted of possessing and/or selling 100 times as much of the powder form. The result? Prisons swelled with petty criminals, a disproportionate number - as much as 85 percent - black, not the drug kingpins of the world.

"For two decades, the United States has pursued, prosecuted and sentenced cocaine offenders in a way that borders on insanity - targeting petty criminals over serious drug dealers - while fostering contempt, instead of respect, for the policies that have sent tens of thousands to jail," writes Ellis Cose in a recent Newsweek online column.

In an early December 7-2 decision, the Supreme Court decided to give federal judges leeway in sentencing for crack convictions. The case in question involved a Desert Storm veteran named Derrick Kimbrough who was caught with crack, powder cocaine and a gun, offenses that should have sent him to prison for two decades or more.

Had he possessed only powder cocaine he would have faced half the sentence, concluded Judge Raymond Jackson, who presided over the trial, in giving Kimbrough a lesser-than-mandated 15-year sentence. An appeals court overruled Jackson's decision only to be reversed by the nation's highest court.

Justice Ruth Bader Ginsburg, who authored the decision with John Paul Stevens, concluded that if powder and crack cocaine, the product of powder cocaine and baking soda crystallized, possess "the same physiological and psychotropic effects" then their users should be treated the same. The ruling deemed the 1986 law that created the disparate sentencing guidelines as "disproportionate and unjust."

Then, in a rare show of mercy a few hours after the decision, President George W. Bush cut the sentence of

Michael D. Short, who had been convicted of aiding a crack-cocaine ring, one year short. It was one of only five commutations granted during his presidency. And a day later, the U.S. Sentencing Commission announced that up to 20,000 federal inmates with crack convictions could be eligible for sentence reductions.

Graham Boyd, director of the American Civil Liberties Union drug reform project, described the recent court decision to Newsweek as the first since the mid-1980s "that actually talks about justice, that seems to have some blood in it."

The recent developments provide a welcomed relief for the families left behind as well as the incarcerated. Karen Garrison, a Washington, D.C., mother of twin sons who were jailed in 1998 on crack offenses, is just one of many beneficiaries of the recent sentencing decision and subsequent developments. She told the Associated Press that she can now "just plan some kind of life" with her sons possibly on their way home.

Unfortunately, the U.S. Justice Department has sounded unwarranted alarms over the sentencing commission's decision, contending that it would result in unleashing thousands of "dangerous prisoners, many of them violent gang members" back into communities ill-equipped to handle them, according to a statement by acting Deputy Attorney General Craig S. Morford.

The department probably wouldn't be as worried over the prospect of a "mass" inmate release if Uncle Sam made prisoner re-entry programs a priority in the first place.

Overall, the latest developments toward eliminating sentencing disparities are likely to have a limited impact because the vast majority of drug convictions come out of state courts. According to the U.S. Bureau of Justice, they outnumbered those in federal courts by a ratio of 15-to-1 in 2004.

Nevertheless, the recent course of events is important. What happens on the federal level could change the course of history at the state level. But first Congress must act to ensure that the disparities in sentencing are eliminated for good. The recent events, by no means, guarantee an end to harsh punishments for crack defendants. Our nation's lawmakers must give the justice system and its enforcers direct and clear guidance just like they did in the 1980s when they decided to hold small-time crack dealers to a more stringent standard than their drug kingpin counterparts.

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