

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**UNITED STATES OF AMERICA**

**-vs-**

**Case No. 6:04-cr-24-Orl-31DAB**

**RANI KHOURY**

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**SENTENCING MEMORANDUM OPINION**

This marks the second sentencing memorandum issued by this Court since the Supreme Court handed down its decision in *Blakely v. Washington*, \_\_\_ U.S. \_\_\_, 124 S. Ct. 2531 (2004).

**I. Background**

Defendant Rani Khoury, a 30 year-old naturalized U.S. citizen born in Kuwait, stands before the Court on a two-count indictment of: 1) possession of at least 100 marijuana plants with intent to distribute, and 2) possession with intent to distribute heroin. Khoury pled guilty to both Counts, and bargained a plea with the Government.

In his Plea Agreement, Khoury admits that, from at least May 3, 2003, until May 23, 2003, he and others knowingly and intentionally manufactured 100 or more marijuana plants at his residence, and that, upon harvest of the plants, he and others distributed the marijuana. Further, Khoury admits that the semi-automatic handgun recovered at his residence as a result of a warranted search by the Government was possessed “in connection to the marihuana [sic] grow.” (Plea Agreement at 15). In addition, Khoury admits that he sold two bags of heroin, each weighing one-tenth of a gram.

## II. Analysis and Sentence

On July 19, 2004, in *United States v. King*, Case No. 04-cr-35-ORL-31KRS, this Court ruled that, in light of *Blakely*, the U.S. Sentencing Guidelines (“the Guidelines”) are unconstitutional, and thus a return to an indeterminate system is warranted. (*See id.*, Doc. 51).<sup>1</sup>

Though no longer bound by the Guidelines,<sup>2</sup> the Court remains bound by the U.S. Code. In this case, Defendant faces, for Count One, a mandatory minimum of 5 years and a maximum of 40 years imprisonment. 21 U.S.C. § 841(b)(1)(B). For Count Two, he faces a maximum imprisonment sentence of 20 years. 21 U.S.C. § 841(b)(1)(C). The Court has no choice, therefore, but to sentence Defendant to the mandatory minimum (60 months) on Count One. *See* 21 U.S.C. § 841(b)(1)(B).<sup>3</sup> As to Count Two, the Court sentences Defendant to a term of 18 months, which term shall run concurrent with Count One.

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<sup>1</sup>The Court notes that the Sixth Circuit vacated its opinion in *United States v. Montgomery*, \_\_\_ F.3d \_\_\_, 2004 WL 1562904 (6th Cir. July 14 2004). Nonetheless, this Court’s analysis of *Blakely* and its conclusions in *King* remain unchanged.

<sup>2</sup>As noted in *King*, the Court will continue to look to the Guidelines for guidance. (*See King*, Case No. 04-cr-35, Doc. 51 at 13).


<sup>3</sup>Khoury’s admission to possessing a firearm in connection with the offense renders moot any thought of applying 18 U.S.C. § 3553(f), which provides for a “limitation on the applicability of statutory minimums in certain cases” if the following factors are present:

- (1) the defendant does not have more than 1 criminal history point . . . ;
- (2) the defendant did not use violence . . . or possess a firearm or other dangerous weapon . . . in connection with the offense;
- (3) the offense did not result in death or serious bodily injury to any person;
- (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, . . . and was not engaged in a continuing criminal enterprise. . . ; and
- (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense . . . but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

*Id.*

A written judgment will be entered in conjunction with this Opinion.

**DONE** and **ORDERED** in Chambers in Orlando, Florida on this 21st day of July, 2004.



**GREGORY A. PRESNELL**  
**UNITED STATES DISTRICT JUDGE**

Copies furnished to:  
United States Marshal  
United States Attorney  
United States Probation Office  
United States Pretrial Services Office  
Counsel for Defendant  
Rani Khoury