

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

UNITED STATES OF AMERICA

-vs-

Case No. 6:03-cr-204-Orl-31DAB

CHARLES MATTHEW PARSON

SENTENCING MEMORANDUM OPINION

On July 21, 2004, this Court sentenced Defendant Charles Matthew Parson under the indeterminate system fashioned post-*Blakely v. Washington*, ___ U.S. ___, 124 S. Ct. 2531 (2004), in *United States v. King*, Case No. 04-cr-35-ORL-31KRS. The following opinion memorializes the sentencing.

I. Background

On September 23, 2003, Defendant Parson and his girlfriend were charged in a two-count indictment with: I) conspiracy to defraud, pass, utter, possess, and conceal falsely made counterfeit obligations of the United States in violation of 18 U.S.C. § 472; and II) knowing and unlawful possession of counterfeit obligations of the United States (i.e., Federal Reserve Notes) in violation of 18 U.S.C. § 472 and 2. Defendant entered into a Plea Agreement with the United States, pursuant to which the Government agreed to dismiss Count I, and Defendant agreed to plead guilty to Count II. In that Plea Agreement, Parson admitted to the following facts.

On January 18, 2003, Parson left his home in Orlando, Florida, with his girlfriend, and began to drive to Jacksonville, where they met another man. (This other man was serving as an informant.) Based upon surveillance and prior investigation, U.S. Secret Service agents and Florida Department of Law Enforcement officers stopped the car on I-95. Parson's girlfriend, the

owner of the car, consented to a search, during which agents found \$5,600 worth of counterfeit notes. Parson and his girlfriend were then arrested.

The girlfriend informed the agents that Parson manufactured the counterfeit notes in their home in Orlando. Thus, the agents obtained a search warrant and during the search, recovered \$1,300 worth of counterfeit notes. In addition, agents found 17 pattern notes, estimated at a loss of \$12,000. Agents also confiscated computer equipment and other manufacturing paraphernalia used to make counterfeit money.

Following the arrest in Florida on January 18, 2003, Defendant remained in state custody until April 24, 2003, at which time the charges were *nolle prosequi*. Thereafter, on July 19, 2003, Defendant was arrested in Kentucky for passing counterfeit money in Tennessee, Kentucky, and Indiana. (The total amount for which Defendant was held responsible was \$35,700 worth of counterfeit notes.) On January 2, 2004, Defendant was arrested pursuant to a warrant issued for the instant offense. U.S. Magistrate Judge James B. Todd held an initial appearance in the Eastern District of Kentucky, and thereafter ordered the Defendant detained and removed to the Middle District of Florida. To date, Defendant has spent a total of 16 months and 9 days in either federal or state custody related to those charges.

II. Analysis and Sentence

This case presents a prime example of why the U.S. Sentencing Guidelines (“the Guidelines”) cannot be applied in a piecemeal fashion when enhancements are present, as has been suggested by numerous courts across the country in light of *Blakely*. See *King*, Case No. 04-cr-35, Doc. 51, at 13-15.

Before *Blakely*, under the Guidelines, the scoring for Defendant would have been a Base Offense Level 9, Adjusted Offense Level 17. This calculation included a 6-level enhancement for the face value of the counterfeit items and a 2-level enhancement for possession of counterfeiting devices. Defendant's Total Offense Level would have reduced to 14 after a 2-level downward adjustment for acceptance of responsibility, and another 1-level downward adjustment for assistance in the investigation. Under this original calculation, Defendant faced a Total Offense Level of 14, Criminal History Category III,¹ for an imprisonment range of 21-27 months.²

The Court notes that neither of the enhancing factors – the amount of counterfeit notes involved, and the possession of manufacturing devices – are elements of the offense. In fact, the statute that Defendant violated reads:

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 472.

The Government argues in the first instance that *Blakely* does not apply to the Guidelines. This Court wholly rejected that argument in *King*. See Case No. 04-cr-35, Doc. 51, at 3-10. Having assumed that *Blakely* would apply to the Guidelines and thus would affect the sentencing in the instant case, Probation prepared “Alternate Guideline Calculations Pursuant to *Blakely v.*

¹Indeed, from the record, it seems that for at least the past five years, Defendant has been self-employed as a professional thief.

²In addition, Probation recommended, pursuant to U.S.S.G. § 5G1.3(b), that any sentence imposed would be reduced by 14 months, for the time served in the undischarged term of imprisonment imposed in Kentucky.

Washington.” Under Probation’s alternate suggestion, Defendant still would score at a Base Offense Level 9, but would receive no enhancements for the value of the counterfeit notes, or for the possession of manufacturing devices, for an Adjusted Offense Level of 9. According to Probation’s alternate calculation, Defendant still would receive a 2-level downward adjustment for acceptance of responsibility. Under this revised scoring, Defendant would face a Total Offense Level 7, Criminal History Category III, for an imprisonment range of 4 to 10 months.

What Probation recommends is the application of the Guidelines using the baseline but no enhancement factors. Under this scenario, the Court could not take into account the magnitude of the offense and scope of Defendant’s counterfeiting activities. Such a result would be absurd. Indeed, under such a regime, a person who passed \$100 worth of counterfeit notes that he obtained from a friend would receive the same sentence as a person who passed \$100,000 worth of counterfeit notes that he produced himself via an elaborate counterfeit manufacturing device. Yet, under the post-*Blakely* sentencing scheme suggested herein by Probation, this is exactly what would result. This Court, having found the entire Guidelines system unconstitutional in *King*, will impose a sentence pursuant to an indeterminate scheme, in which the Court will take into account the magnitude of the offense, as well as the scope of counterfeiting activity.³

Having considered the entirety of the offense, Defendant’s admissions, the Government’s recommended sentence of 24 months, and the Defendant’s request for 21 months, the Court imposes a sentence of 28 months to run concurrent with the 18-month sentence imposed in

³The Government, while not conceding *Blakely*’s application, does agree that, if *Blakely* applies to the Guidelines, piecemeal application of the Guidelines is not appropriate.

Kentucky.⁴ Defendant will receive credit for the 16 months and 9 days served in connection with the Kentucky case, Case No. 03-cr-105-01-KSF, as well as in connection with the related state charges.

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

DONE and **ORDERED** in Chambers in Orlando, Florida on this 22nd 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
Charles Matthew Parson

⁴Under the facts of the instant case, the Court feels that the Guidelines range of 21-27 months imprisonment is too low. The sentence imposed, however, takes into consideration the original scoring under the Guidelines as well as the Plea Agreement.