

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
January 16, 2014

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on January 16, 2014, in Administration Building, 50 Sherburne Avenue, Room 116C; St. Paul, Minnesota. Commission members present were Chair Jeffrey Edblad, Hon. Christopher Dietzen, Sgt. Paul Ford, Hon. Carrie Lennon, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, John Stuart, and Yamy Vang. MSGC staff members present were Executive Director Kelly Mitchell, Jackie Braun, Jill Payne, and Anne Wall. Also present were Jim Early from the Attorney General's Office, and Lisa Netzer and Patrick Courtney from Department of Corrections.

1. Call to Order.

The meeting was called to order at 2:07 p.m.

2. Approval of Meeting Minutes from December 19, 2013.

Motion to approve minutes was made by Justice Dietzen and seconded by Yamy Vang.

Motion carried.

3. Clarifying Executed Consecutive Sentences

Kelly Mitchell explained that MSGC staff and Department of Corrections (DOC) staff has interpreted the language in the Guidelines concerning how to execute consecutive sentences differently. There are two different possibilities of how a consecutive sentence can be executed. In what DOC refers to as the "standard" consecutive sentence, the supervised release portion of the first sentence overlaps with the term of imprisonment on the second sentence. As a result of the overlap, the offender serves the supervised release term from the first sentence concurrently with the term of imprisonment from the second sentence. In the other option, referred to by DOC as the "aggregate" consecutive sentence option, the two executed sentences are added together (aggregated) and then divided into the 2/3 term of imprisonment and the 1/3 supervised release period. Under this scenario, the offender serves the same term of imprisonment as under "standard" consecutive, but serves the supervised release term on the second sentence consecutively to the supervised release term on the first sentence, resulting in a longer term of supervised release.

Initially, the Guidelines were very clear that the intent of the Commission was to have the entire duration of the sentences aggregated together before dividing the 2/3 term of imprisonment and the 1/3 term of supervised release, but over time the intent became less

clear due to revisions. Commission staff has always interpreted the intent of the Commission to aggregate the sentences.

Kelly Mitchell asked judges from around the state how they understood consecutive sentences to be executed. The responses were mixed with some judges perceiving consecutive sentences as “aggregate” and others understanding that consecutive sentences would result in a “standard” consecutive sentences i.e., supervised release term being served concurrently with a term of imprisonment. It is clear that there is not uniformity in practice. Staff does not have a recommendation for action but has instead presented several possibilities to ensure that sentences are executed as intended.

A member stated that consecutive supervised release terms would likely result in a significant fiscal impact due to longer supervision in communities. Another member stated that it is very important that judges understand what the sentence is and that there is consistent application throughout the state of Minnesota. A member stated that some judges have expressed surprise that the DOC was not aggregating the sentences.

Lisa Netzer and Patrick Courtney presented information on how the DOC treats consecutive sentences. Lisa Netzer clarified that unless the sentencing order or transcript states that the sentences are to be aggregated; the sentences are not aggregated and are executed using the standard consecutive sentencing method. This is due, in part, because there is not enough information to create a longer sentence and the sentence would likely be appealed because the only Guidelines language referring to aggregating sentences is contained in the comments and the comments are not part of the Guidelines policy. The application of consecutive sentences can be extremely difficult, especially when involving revocation of supervised release time or when sentencing occurs at different times, in different counties, and by different judges. DOC would anticipate an increase in habeas corpus petitions by inmates that DOC would need to respond to if all sentences were aggregated.

In fiscal year 2013, DOC indicated that there were 91 consecutive sentences executed; two of the 91 cases were treated as aggregate consecutive sentences as defined by DOC. DOC estimated that if aggregate consecutive sentencing were applied to all 91 cases, an average increase in the number of months of supervision would be 20 months. Another consideration for this issue is that many offenders who receive consecutive sentences are required to have intensive supervised release, which requires that probation agents carry small caseloads. The number of agents would need to increase to supervise the offenders for longer durations if all consecutive sentences were treated as aggregate consecutive sentences. This may result in a substantial fiscal impact. A member asked if DOC has always had so few aggregated sentence. Patrick Courtney explained that since the aggregate language only appeared in the comments of the Guidelines, around 2005, DOC

began executing all consecutive sentences using the standard consecutive sentence method unless it was clear from the sentencing order that the intent was for the sentences to be aggregated.

A member noted that when supervised release takes place in prison, the offender is being supervised which should satisfy the supervised release term for the first offense. A member asked if public safety is better served by having consecutive supervised release terms and is the defendant better served by a longer supervision period. It was clarified that the additional cost would take place when the offender finished the first supervised release term which would not take place until at least 2015 or 2016. It was noted that many of the offenders are supervised by community corrections rather than by DOC and community corrections should be included in the conversation. A member also noted that the longer supervised release term could also result in more revocations to prison creating a bed impact. It was clarified that any changes to the Guidelines would be prospective rather than retroactive: not affect sentences that were already imposed. A member stated that this is a critical issue. It was also stated that this is important in maintaining truth in sentencing.

A member suggested that there should be judicial discretion when determining which type of consecutive sentence is appropriate—standard or aggregate. The member stressed that educating judges on the options would be necessary so that they are able to knowingly exercise judicial discretion. Another member expressed interest in looking into changing the Guidelines to make it clear that all consecutive sentences are to be aggregated.

4. Conspiracy and Benefit of a Gang Offenses

When an offender is sentenced for an offense committed for the benefit of a gang under Minn. Stat. § 609.229 subd. 3(a), a duration of 12 months is added to the presumptive duration for a completed offense, and a duration of 6 months is added to the presumptive duration for an attempted offense or for a conspiracy to commit the offense. The additional duration is doubled if the victim was under 18 (24 months for a completed offense; 12 months for an attempt or conspiracy). The term “conspiracy” was added to section 2.G.10, at the time of the full revision of the Guidelines in 2012; however, it is unclear how to apply the conspiracy modifier to a benefit of a gang offense because there are two different types of conspiracies to consider: general conspiracy under Minn. Stat. § 609.175 and conspiracy to commit a controlled substance offense under Minn. Stat. § 152.096.

It was noted that this is not a common issue; however, it is necessary to clarify the Guidelines to incorporate the modifiers in the Electronic Worksheet System which is under development. It was mentioned that the conspiracy to commit a controlled

substance offense statute does not reduce the statutory maximum and is not treated as a modifier elsewhere in the Guidelines.

Motion to not reduce the crime committed for the benefit of a gang enhancement for conspiracy to commit a controlled substance offense under Minn. Stat. § 152.096 was made by Hon. Heidi Schellhas and seconded by Sgt. Paul Ford.

Motion carried.

5. Election of New Vice-Chair

Sgt. Paul Ford nominated Justice Dietzen for Vice-Chair. Sgt. Paul Ford stated that Justice Dietzen always asks good questions during meetings and is very thoughtful of the issues presented to the Commission. The nomination of Hon. Christopher Dietzen was seconded by Hon. Carrie Lennon.

Motion carried.

6. Public Input

There was no input from the public.

7. Adjournment

Motion to adjourn was made by Hon. Carrie Lennon and seconded by Hon. Christopher Dietzen.

Motion carried.

Chair Edblad adjourned the meeting at 3:20 p.m.