

Lenient Criminal Sentence Reversed by Sixth Circuit

The United States Court of Appeals for the Sixth Circuit has reversed a criminal sentence handed down by a Tennessee district court because the sentence was too lenient under the federal Sentencing Guidelines. Robert E. Kelly was convicted of applying and selling a restricted-use pesticide in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). The district court sentenced Kelly to twenty months’ imprisonment although the U.S. Sentencing Guidelines Manual recommended that he receive forty-one to fifty-one months.

Kelly operated a small pest-control business located in Memphis, Tennessee. As part of his business, Kelly routinely applied a pesticide known as methyl parathion to his customers’ homes, and also sold that pesticide to his customers for their own use. Methyl parathion is highly toxic chemical, which can cause nausea, vomiting, cramps, headaches, muscle spasms, and coma. It has been classified as a “restricted-use pesticide” under FIFRA regulations and, accordingly, can only be purchased by qualified persons and used in uninhabited open fields for agricultural purposes.

When Kelly first learned the pest-control trade, apprenticing at the age of ten with his father, FIFRA did not exist and the purchase and use of methyl parathion was essentially unregulated. Since the enactment of FIFRA, Kelly had obtained the necessary permit to purchase methyl parathion, but continued to apply the pesticide using the methods that he had learned as a boy.

Kelly was charged and ultimately convicted of twenty counts of misdemeanor violations of FIFRA. FIFRA makes it unlawful for anyone “to distribute, sell, or to make

available for use, or to use, any registered pesticide classified for restricted use,” except in accordance with its intended purpose. A “knowing” violation of FIFRA is a criminal offense. Although the Sentencing Guidelines recommended that Kelly should serve between forty-one and fifty-one months in prison, the district court reduced Kelly’s sentence because the court found that he did not fully appreciate the harm caused by methyl parathion and that the misdemeanor nature of his crime did not warrant the recommended sentence. The Government appealed the district court’s downward departure from the Sentencing Guidelines and the Sixth Circuit reversed the decision.

First, the Sixth Circuit found that the misdemeanor nature of Kelly’s crimes did not warrant the district court’s deviation from the Sentencing Guidelines. The Sixth Circuit noted that the Sentencing Commission took this factor into consideration when drafting the Sentencing Guidelines. The Sentencing Guidelines “specifically contemplate the possibility of multiple misdemeanor convictions” and provide that the sentence imposed on each conviction should “run consecutively,” the Sixth Circuit held. Accordingly, the Sixth Circuit held that the district court abused its discretion in reducing Kelly’s sentence based on this factor.

Second, the Sixth Circuit found that Kelly’s lack of knowledge of the danger associated with methyl parathion also did not warrant any downward departure from the Sentencing Guidelines’ recommended sentence. The Sixth Circuit noted that, in order to be subject to criminal penalties under FIFRA, the person must commit a “knowing” violation of that statute. The Sixth Circuit held, however, that Kelly had committed such a “knowing” violation because he intentionally sprayed the pesticide, even though he may not have known that such spraying was against the law. Further, the Sixth Circuit

held that FIFRA does not require that a person know the dangers associated with improper pesticide application. Rather, FIFRA “requires only a knowing violation, not knowing endangerment.” Thus, the Sixth Circuit held that, because the statute and the Sentencing Guidelines contemplate Kelly’s lack of knowledge of serious harm, that factor was not an appropriate basis for the district court’s downward departure.

Therefore, the Sixth Circuit reversed the district court and sent the case back for resentencing in accordance with the Sentencing Guidelines.

United States v. Kelly, No. 99-5327 (6th Cir. Dec. 28, 2000)

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