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## Justices unfetter judges on sentences

### The Supreme Court said sentencing guidelines are advisory, not mandatory. A racial disparity was seen.

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The U.S. Supreme Court gave federal judges yesterday more power to craft their own sentences, reaffirming that judges are not bound by sentencing guidelines as long as they offer sufficient justification for an unusually harsh or lenient sentence.

Handing down much-anticipated decisions in two drug cases, the high court, by 7-2 votes, upheld more lenient sentences imposed by judges who found the guidelines too severe.

Ruling in the Virginia case of Derrick Kimbrough, the justices said federal judges are not bound by guidelines that call for stiffer sentences for crack than for powder cocaine. The court said Kimbrough's 15-year sentence was appropriate even though the guidelines called for 19 to 22 years.

For years, many lawyers and civil-rights activists have argued that the harsher penalties for crack cocaine were unfair to black defendants because crack is more prevalent in the black community. White people tend to use cocaine powder at higher rates.

In the case of Brian Gall, a former Iowa college student accused of being part of a conspiracy to distribute the drug ecstasy, the court made it easier for judges to deviate in general from the sentencing guidelines, which have generated controversy and appeals for more than 20 years.

Gall, who had stopped selling ecstasy and was living an exemplary life well before he was arrested, had been sentenced to probation rather than prison. The high court said that sentence was reasonable, given the specifics of the case.

"They are very significant decisions, and we are studying them closely," said Assistant U.S. Attorney Robert A. Zauzmer, who heads the appeals unit in the U.S. Attorney's Office in Philadelphia.

David L. McColgin, a supervisory assistant federal defender of the Federal Community Defender Office in Philadelphia, said the high court ruling would "reduce the terrible racial disparity" from higher penalties for crack.

The rulings come at a time of reexamination within the criminal justice system of the wisdom of sentencing guidelines, especially the requirement for tougher sentences in crack cases.

The guidelines were established by the U.S. Sentencing Commission in the mid-1980s to get more uniform punishment for similar crimes across the nation.

The commission incorporated a two-tier crack cocaine sentencing differential, which required 100 times more powder cocaine than crack for the same prison term, based on the view that crack triggered more violent crime.

After years of criticism about the racial disparity, the sentencing commission approved new guidelines, effective last month, that applied a lower ratio for new cases.

The commission is expected to vote, perhaps as soon as today, on whether to apply that reduction retroactively to people now serving long sentences. That decision could mean early release for about 20,000 crack defendants.

Among those defendants likely to be affected by yesterday's rulings are Marc and Michael Ricks, who pleaded guilty to drug-conspiracy charges in U.S. District Court in Philadelphia for their roles in a gang that distributed crack and powder cocaine, along with heroin and marijuana, in the Easton, Pa., area.

At first, the two brothers were hit with 16- and 27-year prison terms because of the amount of crack at issue. Then the Supreme Court ruled that federal sentencing guidelines were advisory, not mandatory, and the two were resentenced to shorter terms of 11 and 14 years behind bars.

But federal prosecutors appealed, and the U.S. Court of Appeals for the Third Circuit this year ruled in favor of the government, ordering yet another sentencing hearing.

Yesterday's high court action could help the Ricks brothers again by effectively overturning the Third Circuit decision. McColgin said the brothers might now get even lighter sentences.

"The impact is dramatic," McColgin said.

In giving judges more discretion to impose lighter sentences than the guidelines recommend, the high court took a big step in reaffirming the independence of federal judges, some of whom had complained that the guidelines forced them to apply an almost mathematical formula in calculating a sentence rather than tailoring each sentence to a crime.

Rocco Cipparone Jr., a South Jersey defense lawyer, said the rulings showed the "pendulum swinging" from an era of rigidity in sentencing toward restoring judges' ability to impose sentences based on a variety of factors.

"Now it's in full swing toward saying, 'We've got 20 years' experience with this rigid approach and that's not working,' " Cipparone said.

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See majority opinion and dissents in crack case at <http://go.philly.com/crack>

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