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SUPREME COURT OF THE UNITED STATES

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KIMBROUGH *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 06–6330. Argued October 2, 2007—Decided December 10, 2007

Under the statute criminalizing the manufacture and distribution of cocaine, 21 U. S. C. §841, and the relevant Federal Sentencing Guidelines, a drug trafficker dealing in crack cocaine is subject to the same sentence as one dealing in 100 times more powder cocaine. Petitioner Kimbrough pleaded guilty to four offenses: conspiracy to distribute crack and powder; possession with intent to distribute more than 50 grams of crack; possession with intent to distribute powder; and possession of a firearm in furtherance of a drug-trafficking offense. Under the relevant statutes, Kimbrough’s plea subjected him to a minimum prison term of 15 years and a maximum of life. The applicable advisory Guidelines range was 228 to 270 months, or 19 to 22.5 years. The District Court found, however, that a sentence in this range would have been greater than necessary to accomplish the purposes of sentencing set forth in 18 U. S. C. §3553(a). In making that determination, the court relied in part on its view that Kimbrough’s case exemplified the “disproportionate and unjust effect that crack cocaine guidelines have in sentencing.” The court noted that if Kimbrough had possessed only powder cocaine, his Guidelines range would have been far lower: 97 to 106 months. Concluding that the statutory minimum sentence was long enough to accomplish §3553(a)’s objectives, the court sentenced Kimbrough to 15 years, or 180 months, in prison. The Fourth Circuit vacated the sentence, finding that a sentence outside the Guidelines range is *per se* unreasonable when it is based on a disagreement with the sentencing disparity for crack and powder offenses.

Held:

1. Under *United States v. Booker*, 543 U. S. 220, the cocaine Guidelines, like all other Guidelines, are advisory only, and the Fourth Cir-

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cuit erred in holding the crack/powder disparity effectively mandatory. A district judge must include the Guidelines range in the array of factors warranting consideration, but the judge may determine that, in the particular case, a within-Guidelines sentence is “greater than necessary” to serve the objectives of sentencing, §3553(a). In making that determination, the judge may consider the disparity between the Guidelines’ treatment of crack and powder offenses. Pp. 5–21.

(a) Crack and powder cocaine have the same physiological and psychotropic effects, but are handled very differently for sentencing purposes. The relevant statutes and Guidelines employ a 100-to-1 ratio that yields sentences for crack offenses three to six times longer than those for offenses involving equal amounts of powder. Thus, a major supplier of powder may receive a shorter sentence than a low-level dealer who buys powder and converts it to crack. Pp. 5–11.

(1) The crack/powder disparity originated in the Anti-Drug Abuse Act of 1986 (1986 Act), which created a two-tiered scheme of five- and ten-year mandatory minimum sentences for drug manufacturing and distribution offenses. Congress apparently adopted the 100-to-1 ratio because it believed that crack, a relatively new drug in 1986, was significantly more dangerous than powder. Thus, the 1986 Act’s five-year mandatory minimum applies to any defendant accountable for 5 grams of crack or 500 grams of powder, and its ten-year mandatory minimum applies to any defendant accountable for 50 grams of crack or 5,000 grams of powder. In developing Guidelines sentences for cocaine offenses, the Sentencing Commission employed the statute’s weight-driven scheme, rather than its usual empirical approach based on past sentencing practices. The statute itself specifies only two quantities of each drug, but the Guidelines used the 100-to-1 ratio to set sentences for a full range of drug quantities. Pp. 6–8.

(2) Based on additional research and experience with the 100-to-1 ratio, the Commission later determined that the crack/powder differential does not meet the objectives of the Sentencing Reform Act and the 1986 Act. The Commission also found the disparity inconsistent with the 1986 Act’s goal of punishing major drug traffickers more severely than low-level dealers, and furthermore observed that the differential fosters a lack of confidence in the criminal justice system because of a perception that it promotes an unwarranted divergence based on race. Pp. 8–10.

(3) The Commission has several times sought to achieve a reduction in the crack/powder ratio. Congress rejected a 1995 amendment to the Guidelines that would have replaced the 100-to-1 ratio with a 1-to-1 ratio, but directed the Commission to propose revision

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of the ratio under the relevant statutes and Guidelines. Congress took no action after the Commission's 1997 and 2002 reports recommended changing the ratio. The Commission's 2007 report again urged Congress to amend the 1986 Act, but the Commission also adopted an ameliorating change in the Guidelines. The modest amendment, which became effective on November 1, 2007, yields sentences for crack offenses between two and five times longer than sentences for equal amounts of powder. The Commission thus noted that it is only a partial remedy to the problems generated by the crack/powder disparity. Pp. 10–11.

(b) The federal sentencing statute, as modified by *Booker*, requires a court to give respectful consideration to the Guidelines, but “permits the court to tailor the sentence in light of other [§3553(a)] concerns as well,” 543 U. S., at 245–246. The Government contends that the Guidelines adopting the 100-to-1 ratio are an exception to this general freedom and offers three arguments in support of its position, each of which this Court rejects. Pp. 11–21.

(1) The Government argues that the 1986 Act itself prohibits the Commission and sentencing courts from disagreeing with the 100-to-1 ratio. This position lacks grounding in the statute, which, by its terms, mandates only maximum and minimum sentences: A person convicted of possession with intent to distribute 5 grams or more of crack must be sentenced to a minimum of 5 years and a maximum of 40. A person with 50 grams or more of crack must be sentenced to a minimum of 10 years and a maximum of life. The statute says nothing about appropriate sentences within these brackets, and this Court declines to read any implicit directive into the congressional silence. See *Jama v. Immigration and Customs Enforcement*, 543 U. S. 335, 341. Drawing meaning from silence is particularly inappropriate here, because Congress knows how to direct sentencing practices in express terms. See, e.g., 28 U. S. C. §994(h). This cautious reading of the 1986 Act draws force from *Neal v. United States*, 516 U. S. 284, which involved different methods of calculating lysergic acid diethylamide (LSD) weights: The method applicable in determining statutory minimum sentences combined the weight of the pure drug and its carrier medium, while the one controlling the calculation of Guidelines ranges presumed a lower weight for the carrier medium. This Court rejected the argument that the Guidelines and the statute should be interpreted consistently, with the Guidelines' presumptive-weight method controlling the mandatory minimum calculation. Were the Government's current position correct, the Guidelines involved in *Neal* would be in serious jeopardy. The same reasons alleged to justify reading into the 1986 Act an implicit command to the Commission and sentencing courts to apply the 100-

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to-1 ratio to all crack quantities could be urged in support of an argument that the 1986 Act requires the Commission to include the full weight of the carrier medium in calculating LSD weights. Yet *Neal* never questioned the Guidelines' validity, and in fact endorsed the Commission's freedom to adopt a new method. If the 1986 Act does not require the Commission to adhere to the Act's method for determining LSD weights, it does not require the Commission—or, after *Booker*, sentencing courts—to adhere to the 100-to-1 ratio for crack quantities other than those triggering the statutory mandatory minimum sentences. Pp. 13–16.

(2) The Government also argues that Congress made clear, in disapproving the Commission's 1995 proposed Guidelines amendment, that the 1986 Act required the Commission and courts to respect the 100-to-1 ratio. But nothing in Congress' 1995 action suggested that crack sentences must exceed powder sentences by a ratio of 100 to 1. To the contrary, Congress required the Commission to recommend a revision of the ratio. The Government argues that, by calling for recommendations to change both the statute and the Guidelines, Congress meant to bar any Guidelines alteration in advance of congressional action. But the more likely reading is that Congress sought proposals to amend both the statute and the Guidelines because the Commission's criticisms of the 100-to-1 ratio concerned the exorbitance of the crack/powder disparity in both contexts. Moreover, as a result of the 2007 amendment, which Congress did not disapprove or modify, the Guidelines now deviate from the statute's 100-to-1 ratio, advancing a ratio that varies (at different offense levels) between 25 to 1 and 80 to 1. Pp. 16–18.

(3) Finally, the Government argues that if district courts are free to deviate from the Guidelines based on disagreements with the crack/powder ratio, "unwarranted sentence disparities," 18 U. S. C. §3553(a)(6), will ensue. The Government claims that, because sentencing courts remain bound by the 1986 Act's mandatory minimum sentences, deviations from the 100-to-1 ratio could result in sentencing "cliffs" around quantities triggering the mandatory minimums. For example, a district court could grant a sizable downward variance to a defendant convicted of distributing 49 grams of crack, but would be required by the statutory minimum to impose a much higher sentence for only 1 additional gram. The LSD Guidelines approved in *Neal*, however, create a similar risk of sentencing "cliffs." The Government also maintains that, if district courts are permitted to vary from the Guidelines based on their disagreement with the crack/powder disparity, defendants will receive markedly different sentences depending on the particular judge drawn for sentencing. While uniformity remains an important sentencing goal, *Booker* rec-

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ognized that some departures from uniformity were a necessary cost of the remedy that decision adopted. And as to crack sentences in particular, possible variations among district courts are constrained by the 1986 Act's mandatory minimums. Moreover, to the extent that the Government correctly identifies risks of "unwarranted sentence disparities" within the meaning of §3553(a)(6), the proper solution is for district courts to take account of sentencing practices in other courts and the "cliffs" resulting from the statutory mandatory minimum sentences and weigh these disparities against the other §3553(a) factors and any unwarranted disparities created by the crack/powder ratio itself. Pp. 18–20.

(c) *Booker* rendered the Sentencing Guidelines advisory, 543 U. S., at 245, but preserved a key role for the Sentencing Commission. In the ordinary case, the Commission's recommendation of a sentencing range will "reflect a rough approximation of sentences that might achieve §3553(a)'s objectives." *Rita v. United States*, 551 U. S. ___, ___ (slip op., at 11). The sentencing judge, on the other hand, is "in a superior position to find facts and judge their import under §3553(a) in each particular case." *Gall v. United States*, ante, at 13 (internal quotation marks omitted). In light of these discrete institutional strengths, a district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a particular case "outside the 'heartland' to which the Commission intends individual Guidelines to apply." *Rita*, 551 U. S., at ___ (slip op., at 12). On the other hand, while the Guidelines are no longer binding, closer review may be in order when the sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range "fails properly to reflect §3553(a) considerations" even in a mine-run case. *Ibid.* The crack cocaine Guidelines, however, present no occasion for elaborative discussion of this matter because those Guidelines do not exemplify the Commission's exercise of its characteristic institutional role. Given the Commission's departure from its empirical approach in formulating the crack Guidelines and its subsequent criticism of the crack/powder disparity, it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence "greater than necessary" to achieve §3553(a)'s purposes, even in a mine-run case. Pp. 20–21.

2. The 180-month sentence imposed on Kimbrough should survive appellate inspection. The District Court began by properly calculating and considering the advisory Guidelines range. It then addressed the relevant §3553(a) factors, including the Sentencing Commission's reports criticizing the 100-to-1 ratio. Finally, the court did not purport to establish a ratio of its own, but appropriately framed its final

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determination in line with §3553(a)'s overarching instruction to “impose a sentence sufficient, but not greater than necessary” to accomplish the sentencing goals advanced in §3553(a)(2). The court thus rested its sentence on the appropriate considerations and “committed no procedural error,” *Gall, ante*, at 17. Kimbrough’s sentence was 4.5 years below the bottom of the Guidelines range. But in determining that 15 years was the appropriate prison term, the District Court properly homed in on the particular circumstances of Kimbrough’s case and accorded weight to the Sentencing Commission’s consistent and emphatic position that the crack/powder disparity is at odds with §3553(a). Giving due respect to the District Court’s reasoned appraisal, a reviewing court could not rationally conclude that the 4.5-year sentence reduction Kimbrough received qualified as an abuse of discretion. Pp. 21–23.

174 Fed. Appx. 798, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion. THOMAS, J., and ALITO, J., filed dissenting opinions.