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PROTECT Act's mandatory sentencing is unconstitutional.

In 2003, Congress passed the PROTECT Act, which is Washingtonese for "Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003", as well as a bill title that would make many lawmakers fearful of the public backlash of refusing to vote for a bill with such a title (thus, the same fear by lawmakers of voting against the original version of the PATRIOT Act). The PROTECT Act includes mandatory sentencing provisions for crimes involving certain crimes involving children, sex, and child pornography. 18 U.S.C. § 3553(b)(2). The language of this mandatory sentencing provision follows: "18 U.S.C. § 3553(b)(2) Child crimes and sexual offenses (A) Sentencing In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless (i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described." Fortunately, federal courts repeatedly have found this PROTECT Act mandatory sentencing provision to violate the rationale of U.S. v. Booker, 543 U.S. 220 (2005), which prohibits a mandatory -- versus advisory -- application of the federal sentencing guidelines. This week the Fourth Circuit joined in invalidating the mandatory sentencing provisions of the PROTECT Act. The case is U.S. v. Hecht, No. 05-4939 (4th Cir. 2006), and gives a good analysis for invalidating the PROTECT Act's mandatory sentencing provisions, and a good overview of the other circuits that have invalidated those mandatory sentencing provisions. Meanwhile, the Fourth Circuit is willing to reverse sentences that "unreasonably" depart from the federal sentencing guidelines, and in that regard has said: "A sentence that falls within the properly calculated advisory guideline range is entitled to a rebuttable presumption of reasonableness. See, e.g., United States v. Mykytiuk, 415 F.3d 606, 607-08 (7th Cir. 2005). This does not mean, however, that a variance sentence is presumptively unreasonable. Such a ruling would transform an 'effectively advisory' system, Booker, 125 S. Ct. at 757, into an effectively mandatory one. Rather, in reviewing a variance sentence, this court must consider -- in light of the factors enumerated in § 3553(a) and any relevant guideline provisions -- whether the district court acted reasonably with respect to (1) the imposition of a variance sentence, and (2) the extent of the variance. See id. at 765-66; United States v. Mashek, 406 F.3d 1012, 1017 (8th Cir. 2005); cf. United States v. Hairston, 96 F.3d 102, 106-07 (4th Cir. 1996) (noting that both the decision to depart and the extent of departure are subject to review for abuse of discretion). U.S. v. Moreland, 437 F.3d 424, 433-34 (4th Cir. 2006), cert. denied 126 S. Ct. 2054 (2006). Although the above-discussed Moreland decision agreed that a departure below the sentencing guidelines was justified for the defendant, the Fourth Circuit decided that the trial court had departed too much, concluding that "the district court committed 'a clear error of judgment by arriving at a sentence outside the limited range of choice dictated by the facts of the case.' Hawk v. Wing, 433 U.S. F.3d at 631 [8th Cir. 2006] (internal quotation marks omitted)." U.S. v. Moreland, 437 F.3d at 436. Consequently, the injustice of the federal sentencing guidelines -- and the power of the Sentencing Commission's unelected members -- continues. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00