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Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/judge-gleeson-on-mandatory-minimum-sentences>

Public Facing Advocacy Writing

Judge John Gleeson recently made a bold statement about mandatory minimum sentencing as he reluctantly applied the law to defendant Jamel Dossie [[United States v. Dossie, 11-CR-237 \(JG\) \(E.D.N.Y. Mar. 30, 2012\)](#)]. Citing the mandatory minimum sentencing provision of the Anti-Drug Abuse Act 1986 (ADAA), Judge Gleeson of the U.S. District Court for the Eastern District of New York sentenced Dossie to a five-year prison term for selling 88.1 grams of crack cocaine. Judge Gleeson's opinion is noteworthy not because of the sentence, but because of its thorough explanation of why current sentencing practices around mandatory minimums are, in the judge's words, "unjust."

The ADAA's five-year mandatory minimum provision is meant for managers of a drug enterprise [U.S.S.G. 3B1.1(b) or (c)]. Although the judge noted that Dossie was a young, small time, street-level drug dealer's assistant, and not a manager, using the usual meaning of the word, the provision was applied because of the drug quantity involved. In practice, levels of culpability are determined by drug type and quantity, and not by a defendant's actual role or circumstance.

As Judge Gleeson points out, applying severe sentences in this way using drug quantity as a proxy for role can produce unfair outcomes, as happened in Dossie. Judge Gleeson also highlights how mandatory sentencing provisions have a chilling effect on due process rights defendants normally enjoy, further compounding their effects. In this case, the government implied that its charging decision was informed not by drug quantity alone, but by other factors, including linking Dossie to a gang. Because drug quantity is enough to trigger the mandatory minimum, it was not necessary for the prosecution to disclose these factors at sentencing. As a result, Dossie had no opportunity to dispute these alleged aggravating factors, and the court was unable to examine or confirm their veracity.

According to basic legal principles of fairness, both sides ought to have an opportunity to present evidence and argue about facts in dispute. What's more, where disputed facts increase exposure to an enhanced sentence as in Dossie, the prosecution usually bears the burden of proof. But as Judge Gleeson observes, facts under the mandatory minimum regime become irrelevant. If not for these provisions, the defendant would have had the opportunity to contest the prosecution's allegations regarding undisclosed factors which they use to rationalize such a severe sentence, and the government would have the obligation to prove it. Dossie's five-year sentence illustrates how mandatory minimums can violate the most basic tenets of due process.

Fortunately, this needn't be the case. Judge Gleeson argues that prosecutors could easily "cure" the unfair application of mandatory minimum provisions; no new legislation is needed. Gleeson notes, The Department of Justice [can] refrain from dictating severe mandatory minimum penalties when it cannot prove that the defendant was the kind of drug dealer for whom those penalties were enacted. By ensuring that the harsh, wooden mandatory minimum provisions are employed only in the circumstances to which Congress clearly intended to limit them, the government could reform an aspect of the criminal justice system that is in need of repair... promot[ing] transparency and accountability in sentencing and return[ing] to defendants the due process sentencing rights that are snuffed out in cases like this one."

Will federal prosecutors take Gleeson up on his suggestion? Though the remedy may seem simple, and despite its consistency with [current charging policies under Attorney General Eric Holder](#), prosecutors have little to gain from adopting this approach because they stand to lose immense leverage in plea bargaining. Without clear revisions to the law that would *bind* prosecutors, it may be very difficult to compel them to moderate their current use of mandatory minimums: to date, it remains one of [their most effective tools in soliciting cooperation from defendants, advancing investigations, and obtaining sought-after convictions](#).

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