

United States of America, Appellee-Cross-Appellant, v. Daniel Milikowsky, Defendant-Appellant-Cross-Appellee, MACC Holding Corporation, Defendant.

Docket Nos. 94-1450, 94-1492,*94-1493

* voluntarily withdrawn.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

65 F.3d 4; 1995 U.S. App. LEXIS 24457; 1995-2 Trade Cas. (CCH) P71,125

April 27, 1995, Argued

August 30, 1995, Decided

Case write up #4

Meruyert Balgabek

Facts:

Daniel Milikowsky, a principal involved in several small steel-related businesses, including Jordan International Company ("Jordan"), Prospect Industries, and Mid Atlantic Container Corp, got convicted for price-fixing under the Sherman Act. The charges accused him of conspiring to fix steel drum prices in the eastern U.S. from 1987 to 1990. After a jury trial, he and MACC Holding Corp. were found guilty. The sentencing involved a downward departure from imprisonment, considering the potential hardship on Milikowsky's employees. The Sentencing Guidelines initially set the offense level at eleven, but it was lowered to ten due to the impact on Milikowsky's family and employees. He received probation, six months of home confinement, 150 hours of community service, and a \$250,000 fine. Milikowsky appealed, citing the government's failure to correct false testimony, cross-examination limits, and prejudicial comments. The government cross-appealed, challenging the downward departure. The court affirmed Milikowsky's conviction and sentence, dismissing arguments for both reversal and the vacatur.

Procedural posture:

The case involved an appeal by Daniel Milikowsky and a cross-appeal by the government from a conviction for price-fixing in violation of the Sherman Act. The trial took place in the United States District Court for the District of Connecticut. Milikowsky appealed, arguing issues related to false testimony, cross-examination limitations, and prejudicial comments. The government cross-appealed the district court's downward departure in sentencing asking for a stricter punishment. The United States Court of Appeals for the Second Circuit upheld Milikowsky's conviction, the original judgment and sentence were affirmed.

Issue:

The central issue was whether a court, following the Sentencing Guidelines, had the authority to deviate downward from the standard sentencing range to prevent the incarceration of an antitrust offender charged under the Sherman Act, when imprisonment would impose significant hardship on the defendant's family and employees.

Holding:

The departure was considered justifiable when imprisonment would result in extraordinary hardship for the defendant's family and employees. The United States Court of Appeals for the Second Circuit affirmed the conviction and the sentence.

Reasoning:

The majority opinion concluded that the district court's decision to depart downward is not inconsistent with the Antitrust Guideline's deterrence rationale.

The opinion emphasizes that the Sentencing Reform Act allows departure when there's a mitigating circumstance not adequately considered by the Sentencing Commission. The court cites cases such as *United States v. Johnson*, *United States v. Califano*, and *United States v. Alba*, where departure was justified to reduce the destructive effects of a defendant's incarceration on innocent third parties.

In *Milikowsky's* case, the court found the extraordinary impact of imprisonment on his employees to be a mitigating circumstance. Evidence presented, including letters and testimony, supported the conclusion that imprisonment would lead to bankruptcy and job loss for 150 to 200 employees. The majority opinion, affirming the conviction and sentence, underscores the importance of considering atypical cases and exercising compassion in the sentencing process, citing that the Sentencing Guidelines "do not require a judge to leave compassion and common sense at the door to the courtroom."

Dissent:

The dissenting opinion challenges the district court's decision to downwardly depart from the Sentencing Guidelines. It disputes the departure based on the impact of imprisonment on the defendant's employees. The dissent relies on the Antitrust Guideline's deterrence rationale, emphasizing that antitrust offenders are generally meant to be sentenced to prison to deter potential violators. Reference is made to case law from other circuits, including *United States v. Reilly* (3d Cir. 1994), *United States v. Sharapan* (3d Cir. 1994), *United States v. Rutana* (6th Cir.), and *United States v. Mogel* (11th Cir. 1992). The dissent contends that these cases establish a precedent against considering the business effects, including those on employees, as grounds for departure. It questions the district court's characterization of the circumstances as "extraordinary" and argues that departing from the Antitrust Guideline undermines its core deterrence objectives.

Critique:

The court's decision is laudable in recognizing the unique aspects of *Milikowsky's* situation, showcasing a humane perspective. However, to fortify the decision, it would have been beneficial to address critics' concerns more explicitly. Providing a deeper analysis of how the departure coexists with the broader objectives of deterrence in antitrust cases and elucidating why the court deemed the circumstances extraordinary would have added clarity and strength to the overall reasoning.