Prisonology™

Walt Pavlo - 617-858-5008
walt@prisonology.com

Case Study Summary
Johnson vs U.S. Re-Sentencing

Prisonology was contacted by Assistant Federal Public Defender (Western District of VA) about her client who was being re-sentenced as a result of the **Johnson v U.S.** decision in June 2015.

Background: Defendant was sentenced to 300 Months for ecstasy pills and having a gun in commission of the offense (Armed Career Criminal Act). He is currently in the 10th year of incarceration. As a result of the Supreme Court Decision of Johnson v U.S. he was granted a re-sentencing hearing which took place on June 17, 2016.

Issue: In putting together an updated Presentence Report, U.S. Probation relied upon a BOP computer generated report of incidents without looking at the individual reports. Probation also concluded that a restitution payment had not been made. In summary, U.S. Probation believed that the inmate had adjusted "poorly" to prison and was not deserving of a reduced sentence. In fact, Probation indicated that such behavior may warrant a sentence outside of the Advisory Guidelines

Actions Taken: Prisonology looked at each incident report for language that would further put the incident into perspective. In conclusion, the following was noted:

- Inmate was in a USP and this environment should be put into perspective along with the number of years served. In the 10+ years served, the inmate had 13 incident reports and none of them involved a high degree of violence.
- In each incident, the inmate took responsibility for his actions and accepted the punishment (mostly in the form of Good Time Lost, and privileges lost - Commissary and Phone).
- Prisonology presented that the inmate had already been punished for these actions through BOP disciplinary hearings and punishments. In fact, the inmate had been given more prison time already through loss of Good Time. To add additional time on during this re-sentencing, would amount to punishing the inmate twice for the same offense.
- The incident report contained an error, which we identified as likely occurring because of a mis-key by the BOP for "Wearing A Disguise or Mask", which the inmate denied ever occurred. In fact, there was no detail of this incident (a level 200 offense) so we presumed that the officer mistakenly keyed in "207" (Wearing A Disguise or Mask) instead of "297" which relates to phone abuse.
- Most incident reports documented more detail and found the behavior was not as severe as would be assumed from looking at a summary report.
- Inmate had documentation of good relationships with supporting family members outside of prison.
- After reviewing the records, it was also noted the client had completed several programs most notable the "Challenge" program which is a more intense residential program requiring more responsibility and effort than most BOP programs.
- Probably the most significant factor is the BOP custody classification form (BP-338) actually assesses living sills and program placement for the overall adjustment to incarceration.

Although the BOP had the option to score the client as "poor", they did not do so which totally contradicted the USPO's input.

- Prisonology expert, with over 23 years of case management experience, prepared a Declaration, providing an opinion as to why this inmate was well-adjusted to prison life and should be considered for a lighter sentence based on his good behavior.
- Prisonology expert provided recommendation for extended halfway house based on Second Chance Act.
- Prisonology presented a line of questioning for defense counsel for U.S. Probation Officer who was to testify to his findings and opinion at sentence (seek to question expertise and knowledge of BOP policy in order to come to his conclusion).
- Judge allowed live audio testimony of Prisonology expert with BOP experience.

Result: Inmate was sentenced to the bottom of the new guideline with a release date from prison of June 2017 and a recommendation for a year of halfway house under the Second Chance Act.

Testimonial:
From Federal Defender's Office … Posted to zzFDO_Helpdesk

> *June 20, 2016*
> *I had a fantastic experience in a Johnson resentencing last week where the PO had originally recommended an upward variance from the non-ACCA guideline based on my client's institutional (mis)conduct over the last decade. These guys helped evaluate all the BOP records and explain how the PO actually had no idea what he was talking about (which the PO ended up essentially agreeing with on the stand). In the end my client got the very bottom of the new guideline rather than any kind of upward variance.*
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> *Mr. Donson testified by phone at the sentencing hearing. He was extremely fluent and informative, and the judge really ended up accepting our view that my client's 13 disciplinary infractions were almost par for the course in some USPs In particular, though my client had shots for fighting, he had no assaults. Mr. Donson was able to explain to the judge that when you're assaulted and you defend yourself, you get a shot for fighting.*
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> *It ended up being a pretty poignant sentencing hearing. The judge started out reasonably hostile to my client and ended up after the hearing coming down and shaking his hand.* ***At Mr. Donson's suggestion, the judge also ended up specifying that my client's last 12 months (rather than 6 or 9) should be spent at a halfway house pursuant to the "Second Chance Act" (which I had never heard of but gives the BOP that discretion but they rarely use it apparently without a judge's recommendation).***
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> *Christine Madeleine Lee*
> *Assistant Public Defender for the Western District of VA*
> *Email: Christine_Lee@fd.org*