

Supreme Court Says Crack Sentences Can Be Reduced

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WASHINGTON (AP) -- The [Supreme Court](#) on Monday said judges may impose shorter prison terms for crack cocaine crimes, enhancing judicial discretion to reduce the disparity between sentences for crack and cocaine powder.

By a 7-2 vote, the court said that a 15-year sentence given to Derrick Kimbrough, a black veteran of the 1991 war with Iraq, was acceptable, even though federal sentencing guidelines called for Kimbrough to receive 19 to 22 years.

"In making that determination, the judge may consider the disparity between the guidelines' treatment of crack and powder cocaine offenses," Justice [Ruth Bader Ginsburg](#) said in her majority opinion.

The decision was announced ahead of a vote scheduled for Tuesday by the U.S. Sentencing Commission, which sets the guidelines, that could cut prison time for up to an estimated 19,500 federal inmates convicted of crack crimes.

The Sentencing Commission recently changed the guidelines to reduce the disparity in prison time for the two crimes. New guidelines took effect Nov. 1 after Congress took no action to overturn the change. Tuesday's vote is whether to apply the guidelines retroactively.

In a separate sentencing case that did not involve crack cocaine, the court also said judges have discretion to impose more lenient sentences than federal guidelines recommend. The cases are the result of a decision three years ago in which the justices ruled that judges need not strictly follow the sentencing guidelines. Instead, appellate courts would review sentences for reasonableness, although the court has since struggled to define what it meant by that term.

The guidelines were established by the Sentencing Commission, at Congress' direction, in the mid-1980s to help produce uniform punishments for similar crimes.

Justice [Samuel Alito](#), who dissented with Justice [Clarence Thomas](#) in both cases, said that after Tuesday's decisions, "Sentencing disparities will gradually increase."

Kimbrough's case did not present the justices with the ultimate question of the fairness of the disparity in crack and powder cocaine sentences. Congress wrote the harsher treatment for crack into a law that sets a mandatory minimum five-year prison sentence

for trafficking in 5 grams of crack cocaine or 100 times as much cocaine powder. The law also sets maximum terms.

Seventy percent of crack defendants are given the mandatory prison terms.

Kimbrough is among the remaining 30 percent who, under the guidelines, get even more time in prison because they are convicted of trafficking in more than the amount of crack that triggers the minimum sentences.

"A reviewing court could not rationally conclude that it was an abuse of discretion" to cut four years off the guidelines-recommended sentence for Kimbrough, Ginsburg said.

In the other case, the court, also by a 7-2 vote, upheld a sentence of probation for Brian Gall for his role in a conspiracy to sell 10,000 pills of ecstasy. U.S. District Judge Robert Pratt of Des Moines, Iowa, determined that Gall had voluntarily quit selling drugs several years before he was implicated, stopped drinking, graduated from college and built a successful business. The guidelines said Gall should have been sent to prison for 30 to 37 months.

"The sentence imposed by the experienced district judge in this case was reasonable," Justice [John Paul Stevens](#) said in his majority opinion.

[Chief Justice John Roberts](#) and Justices Stephen Breyer, Anthony Kennedy, [Antonin Scalia](#), David Souter, Ginsburg and Stevens formed the majority in both cases. The cases are Kimbrough v. U.S., 06-6330, and Gall v. U.S., 06-7949.

http://www.nytimes.com/aponline/us/AP-Scotus-Crack-Cocaine.html?_r=1&hp&oref=slogin