

June 10, 2013

## The Sentencing Guidelines and the Constitution

By THE EDITORIAL BOARD

Marvin Peugh was convicted in 2010 on five counts of bank fraud connected to loans to farming businesses he ran with his cousin.

Under the [1998 United States Sentencing Guidelines](#), which were in force when he committed the crimes in 1999 and 2000, he was subject to a prison sentence of 30 to 37 months. Under the [2009 revised guidelines](#), in force when he was convicted and sentenced, he was subject to a stiffer sentence of 70 to 87 months.

A Federal District Court judge in Northern Illinois followed the later guidelines and sentenced him to 70 months. The United States Court of Appeals for the Seventh Circuit [affirmed](#) the sentence.

On Monday, in a 5-to-4 ruling, [the Supreme Court properly reversed that decision](#), ruling that the trial judge violated the Constitution's [ex post facto clause](#), which prohibits the federal and state governments from imposing a punishment greater than the one in force when the crime was committed.

Even though the guidelines are “merely advisory” rather than mandatory, as the Supreme Court ruled in 2005, they play an important role in sentencing. Under ex post facto analysis, there was a “significant risk” that Mr. Peugh’s punishment would be increased because the judge was likely to follow the later guidelines and impose a sentence in the higher range, Justice Sonia Sotomayor explained in the majority opinion.

“It is simply not the case that the sentencing guidelines are merely a volume that the district court reads with academic interest in the course of sentencing,” she wrote. In the past six years, federal trial judges have followed the guidelines in more than four-fifths of sentences. District courts are required to begin their sentencing analysis by looking at the ranges in the guidelines; a judge must have a good reason for deviating from those ranges.

The justice system has a strong interest in promoting “uniformity” in sentencing. At the same time, judges should have the flexibility to impose a sentence that fits the case before them.

But the Supreme Court justices were right to insist that the duty to adhere to the Constitution, including to the ex post facto clause, extends to the sentencing guidelines.