

Federal Standards of Review V.C

Federal Standards of Review: Review of District Court Decisions and Agency Actions
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Harry T. Edwards^{a0}, Linda A. Elliott^{a1}, Marin K. Levy^{a2}

Part One. Review of District Court Decisions
Chapter V. Decisions Committed to a District Judge's Discretion:
Giving Meaning to the Variable Abuse of Discretion Standard

C. Application of the Abuse of Discretion Standard of Review in the Post-*Booker* Sentencing Era

Imposition of federal criminal sentences is governed by 18 U.S.C. § 3553. In *United States v. Booker*, 543 U.S. 220 (2005), the Court excised the statutory provision of Section 3553 making the Federal Sentencing Guidelines mandatory. *Id.* at 245. However, in doing so, the *Booker* Court was clear that the Guidelines were not to be ignored. Rather, sentencing judges were instructed to “take account of the Guidelines together with other sentencing goals” and factors delineated in Section 3553. *Id.* at 259–60. “[T]he Guidelines ... now serve as one factor among several courts must consider in determining an appropriate sentence.” *Kimbrough v. United States*, 552 U.S. 85, 90 (2007).

The *Booker* Court also invalidated the provision of Section 3553 that had required *de novo* review of sentences that differed from those prescribed by the Guidelines. *Booker*, 543 U.S. at 259. Post-*Booker* “appellate review of sentencing decisions is limited to determining whether they are ‘reasonable.’” *Gall v. United States*, 552 U.S. 38, 46 (2007). Accordingly, “the familiar abuse-of-discretion standard of review now applies to appellate review of sentencing decisions.” *Id.*

The Supreme Court described the basic framework for abuse of discretion review of post-*Booker* sentences in *Gall*:

Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard. It must first ensure that the district court committed no significant procedural error Assuming that the district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard. When conducting this review, the court will, of course, take into account the totality of the circumstances, including the extent of any variance from the Guidelines range. If the sentence is within the Guidelines range, the appellate court may, but is not required to, apply a presumption of reasonableness. But if the sentence is outside the Guidelines range, the court may not apply a presumption of unreasonableness. It may consider the extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance. The fact that the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.

Id. at 51; see also *Setser v. United States*, 132 S. Ct. 1463, 1472 (2012); *Rita v. United States*, 551 U.S. 338, 350–51 (2007).

In *Kimbrough* and *Spears v. United States*, 555 U.S. 261 (2009) (per curiam), the Court further elaborated on the appropriate application of the abuse of discretion standard when a sentence is outside the Guidelines range. In

formulating the Guidelines, the Sentencing Commission intended each Guideline to carve out a “heartland,” or mine run of cases embodying the conduct described by the Guideline. See *Koon v. United States*, 518 U.S. 81, 93 (1996). In *Kimbrough* and *Spears*, the Court explained that “a district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a particular case outside the ‘heartland’ to which the Commission intends individual Guidelines to apply.” *Kimbrough*, 552 U.S. at 109; see also *Spears*, 555 U.S. at 264. In other words, if a particular defendant's circumstances are dissimilar to the circumstances to which the Commission intended a Guideline to apply, a district court's decision to vary from that Guideline deserves great deference.

As the Court acknowledged, one implication of its analysis of outside the heartland departures is that departures from Guidelines recommendations may be subject to less deference when a case is *inside* the heartland, meaning that the case is factually similar to those cases to which the Commission intended the Guidelines recommendation to apply. *Spears*, 555 U.S. at 264. In such a situation, the Court explained, the departure of the sentencing court must necessarily be based on a policy disagreement with the Guidelines, rather than on the individual characteristics of the defendant or the case. *Id.*

However, in upholding the sentences in *Kimbrough* and *Spears*, both downward departures in inside the heartland crack cocaine cases, the Court declined to apply a presumption of less deference. Rather, it held that “district courts are entitled to reject and vary categorically from the crack-cocaine Guidelines based on a policy disagreement with those Guidelines.” *Spears*, 555 U.S. at 265–66 (“clarify[ing]” the holding in *Kimbrough*). In support of this conclusion, the Court explained that the crack cocaine Guidelines, which involve a 100-to-1 ratio treatment of crack as opposed to powder cocaine, “present no occasion for elaborative discussion of” the possible presumption of less deference in inside the heartland departure cases because those Guidelines “do not exemplify the Commission's exercise of its characteristic institutional role. In formulating Guidelines ranges for crack cocaine offenses, ... the Commission looked to the mandatory minimum sentences set in [the then-controlling anti-drug law], and did not take account of empirical data and national experience,” *Kimbrough*, 552 U.S. at 109, the latter being the Commission's usual approach to developing the Sentencing Guidelines, see *id.* at 96. Moreover, “the Commission itself ... reported that the crack/powder disparity produces disproportionately harsh sanctions ... [that are] greater than necessary in light of the purposes of sentencing set forth in § 3553(a).” *Id.* at 110. “Given all this,” the Court concluded that “it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence greater than necessary to achieve § 3553(a)'s purposes, even in a mine-run case.” *Id.*; see also *Spears*, 555 U.S. at 265–66.

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Footnotes

- a0 Senior Circuit Judge, U.S. Court of Appeals for the D.C. Circuit and Professor of Law, New York University School of Law
- a1 Professor of Law, Affiliated Transnational Faculty, University of Peking School of Transnational Law and Adjunct Professor of Law, New York University School of Law
- a2 Associate Professor, Duke University School of Law