

James A. Parker
District of New Mexico

*. . . I think the guideline sentences in [regard to] some of these drug offenses are extreme and draconian and I think this is a sentence that's longer than what is necessary, but it's a sentence that under the law I am required to impose. . . .*¹

Appointed by: President Ronald Reagan, 1987.

Law School: University of Texas, LL.B. 1962.

Prior Legal Experience: Modrall, Sperling, Roehl, Harris & Sisk, 1962-87.

Background and Reputation in the Legal Community

Judge Parker graduated first in his class in law school. He went on to practice law with a New Mexico firm for twenty-five years before being appointed to the federal bench. As a lawyer, Judge Parker was very active in bar organizations and committees including the New Mexico Board of Bar Commissioners. He also served for many years as the Chairman of the Bylaws and Joint Principles Committee of the New Mexico State Bar and as Chairman of the Albuquerque Bar's Judicial Selection Committee.

Lawyers give Judge Parker high marks for his legal skills and professionalism. He has received Outstanding Judge awards from both the Albuquerque and state bar associations. Lawyers say he runs his courtroom well and is prepared and decisive. He is considered open minded and fair. Criminal defense lawyers believe defendants receive a fair trial. Comments included, "Parker is not in pocket of the prosecutors." "He makes his decisions independently." On sentencing, lawyers noted, "I wouldn't say that he's a light sentencer. I place him probably in the middle." "He stays within the guidelines, but he isn't unduly harsh." "He sentences according to the guidelines." "He can be tough on sentencing sometimes, especially if it's a case involving gangs or RICO matters."

Judge Parker on Sentencing Policy

Judge Parker agrees in principle with the Sentencing Reform Act's efforts to ensure uniformity and honesty in sentencing. Generally speaking, however, he believes that the current Guideline sentences for non-violent, first-time offenders are too severe. On the other hand, he believes sentences for violent offenders are not long enough. Because the District Court in New Mexico handles many felony criminal cases from the Native American reservations, his court sees more sex crimes involving children than the typical federal court. The fact that sentences in these cases are often shorter than those for drug offenses especially bothers him.

In general, he wishes that there was more judicial discretion for first-time offenders, especially for the cases that involve those on the lowest rung of offenders, such as drug couriers. However, he notes that defendants who are drug users need to be monitored very carefully if they are allowed back into the community. He also would like more latitude with

1

Sentencing Transcript ("James Sent. Tr.") at 27, *United States v. Amanda James*, No. Cr. 99-1053 (D. N.M. November 16, 2000).

criminal history calculations because minor convictions sometimes inflate a defendant's criminal history category. Finally, he believes that female defendants are often punished too severely by the Guidelines system because they are rarely running the operation and often get involved in criminal conduct solely because of romantic relationships.

Judge Parker believes that the current system actually gives the U.S. Attorneys' Office more power than judges in determining the sentence. He thinks that judges can be trusted to be fair and just and that the government's view of the sentence is not always appropriate. He gives the "backpacker" courier cases that were a contentious issue in this district a few years ago as an example. Drug traffickers were assembling small groups of couriers in Mexico to bring drugs in by foot in backpacks. While each backpacker in the group received cargo from the same source, there was no evidence that prior to agreeing to make the trip that an individual backpacker was part of a larger, ongoing organization. Nevertheless, the U.S. Attorney's Office sought to aggregate the weight of all the drugs in the group to each defendant. Thus, judges were being asked to hold a defendant (who had been paid a few hundred dollars to backpack 50 pounds of marijuana) responsible under relevant conduct, for the 500 pounds brought in by the defendant and nine other backpackers caught at the same time. The judge noted that the current U.S. Attorney is no longer regularly requesting this kind of aggregation.

David T. Sanchez

Offense: Felon-in-Possession of a Firearm.
Sentence: 15 year mandatory minimum.
Release Date: November 10, 2005.

Before this case, David Sanchez had lived in either Valencia or Bernalillo County, New Mexico for his entire life. While his family was poor, he reports that his parents were able to provide for him and his four siblings in his childhood. He reports loving his father but concedes that he was a serious alcoholic and that substance abuse problems were rampant in his family and his community.² Thus, at thirteen, David began abusing marijuana and alcohol. In 1969, at age fourteen, he became a heroin addict and he spent the next twenty plus years trying to fight this disease, often unsuccessfully. When he was using, David sometimes turned to non-violent crime to feed his addiction. As a result, he accumulated a substantial number of prior convictions, including three attempted or completed residential burglaries as well as petty larcenies, drug charges, and a DUI.



David's federal sentence arose from a parole officer's January 24, 1992 visit to the mobile home David shared with his father after David missed a meeting. David was not home but his father confirmed for the probation officer that David was again using drugs. Pursuant to

2

The PSI reported that two of his siblings also had drug problems. David says that now, both his sister and brother are taking methadone. His sister got a college degree and is working. His brother is unemployed but staying out of trouble. January 7, 2007 telephone interview with David Sanchez (notes on file with author).

consent from David's father, the probation officer searched the home and in the back corner of the bedroom closet, the officer found a vinyl case with a shotgun inside. David's father allowed the officers to seize the weapon as it was not his and he knew David was not supposed to have a firearm.

In his pre-sentence interview, David admitted putting the shotgun in the closet. He claimed that he had taken it from a belligerent and intoxicated friend for safekeeping but never returned it as intended. He admitted that he knew he was not supposed to possess a firearm and accepted responsibility for having the shotgun.³ Still, he told the probation officer that he wanted

. . . Judge Parker to know that even though I have several prior residential burglary convictions I have never used a gun to commit any crime and I don't even know how to load or fire a gun. I have never threatened a human being's life with a gun and I never would. It's important to me that Judge Parker know that about me.⁴

However, none of these facts were relevant to the statutory or Guidelines framework for this offense. Under the Sentencing Guidelines, he had an adjusted Offense Level of 225 and a Criminal History Category VI, with a sentencing range of 84-105 months. However, his three prior residential burglaries qualified as "crimes of violence" under the Armed Career Criminal Act ("ACCA").⁶ Under that statute, a mandatory fifteen year sentence was required regardless of the circumstances of the gun possession.

In her sentencing memorandum, David's attorney attacked the government's decision to charge David as an Armed Career Criminal. She noted that in this time period, the Justice Department had vigorously pursued felon-in-possession cases under the rubric of "Operation Triggerlock." She argued that under the Justice Department's own definitions, David's criminal record did not qualify as a Triggerlock prosecution. For example, she quoted a Department of Justice publication that stated that

Project Triggerlock protects communities by achieving long-term incarceration of habitual violent criminals. Too often, these criminals have served brief terms for heinous crimes. Triggerlock evens the scales.⁷

3

This friend was his co-defendant, Mary Mollohan, a fellow drug user, who was living with him and his father at the time. When arrested, David agreed to take responsibility for the gun so that the prosecutor would drop the charges against Mary. However, David admits that he had no idea how much time he was faced for this act of chivalry. January 7, 2007 telephone interview with David Sanchez (notes on file with author).

4

Presentence Investigation Report at 4, *United States v. David Thomas Sanchez*, Cr. 92-2237 (D. N.M. Dec. 4, 1992)(copy on file with author).

5

He received a two point reduction for acceptance of responsibility.

6

See 18 U.S.C. § 924(e).

7

November 30, 1992 Sentencing Memorandum re David Thomas Sanchez, at 6 (quoting DOJ Alert attached as Exhibit C) (partial copy on file with author). His attorney also quoted other DOJ documents in this memo that directed that Triggerlock prosecutions be targeted at removing gang

Here, none of David's crimes had been violent or heinous and he had served substantial periods of incarceration in the state system. Nevertheless, his attorney conceded that under the ACCA's broad definition of a prior "crime of violence," David's unarmed residential burglary crimes qualified as predicate crimes. Without minimizing his extensive record, she complained that the ACCA's fifteen year term applied without any "individualized judicial determination of whether the offender's prior record indicates a history of dangerous or violence, or even an evaluation of whether the offender has ever used a gun in the commission of a crime."⁸ Lastly, she argued that David needed long term hospitalization and treatment and that sentencing him to fifteen years was a waste of taxpayer money.

At the sentencing hearing, David's lawyer repeated her arguments, struggling at times with her feelings about the case.⁹ She told Judge Parker that "There was no room under this law to consider the man and the nature of the crime in fashioning the sentence, and there is no room under this law to ask for mercy from the Court."¹⁰

When permitted to speak, David told the judge that while he did not deny his past, "to prosecute me as a violent and dangerous criminal is far from the truth. . . . No matter how desperate I may have been at times, never have I resorted to violence as a means of getting money to support my habit; I could never do that."¹¹ He apologized to his family and then told Judge Parker

I am also sorry that I am standing here before you too because I truly believe this must be as difficult for you as it is for most of us in this courtroom today. Thank you, Your Honor, for your time and understanding.¹²

Judge Parker agreed with many of the concerns expressed by David and his counsel. He stated, "To my mind, it's not a just sentence, because I think it is way too severe . . . I am distressed by the length of the sentence that I am asked to impose here under Rule 11(e)(1)(c)."¹³ He asked the lawyers if there were any options under which he would have discretion to impose a lower sentence, for example if the defendant had gone to trial. Both counsel informed the judge that the fifteen year mandatory minimum controlled the case no matter what the parties did. The defense attorney explained that after trial, Mr. Sanchez

offenders, drug dealers and gun runners, "and influencing the future behavior of criminals who participate in violent crime." *Id.* Thus, while David was a "chronic offender," a term used by the ACCA literature; he was arguably not the type of chronic offender at whom Triggerlock was allegedly targeted. *Id.*

8

Id. at 9.

9

Sentencing Transcript at 7, *United States v. David Thomas Sanchez*, Cr. 92-2237 (D. N.M. December, 4, 1992) (judge asking counsel if she needed a short break before continuing).

10

Sent. Tr. at 8-9.

11

Sent. Tr. at 9.

12

Sent. Tr. at 9-10.

13

Sent. Tr. at 10-11.

might have been exposed to an even higher sentence because he might be denied acceptance of responsibility and because the indictment referred to a second weapon in the house which was dismissed as part of the plea.¹⁴

Judge Parker then asked a more senior federal prosecutor in the courtroom to address the issue and specifically if the U.S. Attorney's Office had ever exercised its discretion not to seek an enhancement under the ACCA. The prosecutor responded that it was Department of Justice policy "to seek the enhancement if the evidence warrants it, unless there are exceptional circumstances. And simply because the weapon was not pointed at someone or not found next to narcotics, does not in and of itself, necessarily justify not seeking the enhancement."¹⁵ The government then represented to the Court that the case had been reviewed and it was unwilling to offer any lower plea agreement. Judge Parker responded, "Well, since you're telling me that there's no chance of anything more favorable to him . . . coming from your office, I will accept the agreement that the government and the defendant have made."¹⁶

David left school in eleventh grade but completed his G.E.D. in 1973. He received certifications in meat cutting and culinary arts from two different vocational schools, and when he was clean from drugs, he worked as a cook. In 1982, David married Kathy Chavez and was able to remain drug free for three years. They had two children together, but the marriage fell apart, first from economic pressure, and then from David's relapse into drug use. They were divorced in 1986 while he was in state prison. The PSI states that he had regular contact with his children and provided support when he could. David was remarried at the time of sentencing but had no children with his second wife.

His family reported that he spent much of his time before this case caring for his ninety five 95 year-old grandmother, including washing, bathing, and cooking for her. He also helped care for his nephew while his sister was at work. Although his father told the probation officer about David's relapse and consented to the search, he and his other family members consider his son a gentle person who was genuinely devoted to caring for his grandmother and nephew.

From prison, David wrote that his father died shortly before his release, which he says was the hardest thing he faced while in prison. Otherwise, he wrote that his two sons were doing well. One is in the Army and the other is in the Navy, but they visit when they can. He says, "They are very good young men, dedicated and proud to be serving their country."¹⁷ He also wrote that he and his first wife had reconciled and remarried and that "[s]he is at home and waiting for my release."¹⁸

14

Id. at 12-13. That gun may have belonged to David's female co-defendant but the government agreed to dismiss the charges against her.

15

Sent. Tr. at 17.

16

Sent. Tr. at 19-20.

17

November 29, 2003 letter to the author at 2 (on file with author).

18

Id. at 1.

However, since his release in 2005, David has struggled with health problems, such as epilepsy, which resulted from a car accident in his 30s. He did reunite with his first wife and he started work on building an art studio at home in the hope of starting a small business based upon his artistic talent that he discovered in prison.¹⁹ Unfortunately, he fell while plastering the walls and hurt his back. The doctor he saw prescribed a variety of pain killers, ultimately including morphine -- a mistake for a former heroin addict. David admits that he began taking too many of the pills and his wife left him as she saw this old problem resurface. However, David recognized that he was getting into trouble, quit the opiate-based painkillers and went onto methadone. He takes some solace in the fact that he did not relapse into illegal drug use.²⁰

David recognizes that he is suffering from the effects of his long incarceration and his history of drug use but he struggles with how to address these issues. His mother says that she is worried about his depression over being unable to live up to his wife's expectations and his re-adjustment difficulties.²¹ He also complains of anxiety and his inability to work due to his health problems. Still, he is happy to be in communication with his sons in the military and his ex-wife still talks to him frequently. He is also in counseling with an organization called "La Viva Nueva" and under a doctor's care.

When asked how much time he needed in prison to kick heroin and stop committing petty crimes to support his habit, his first response was one year. When pressed, David was more honest and admitted that six years was probably a better estimate of the time it took him in prison to get to a place where he was ready and able to leave his old life behind.²²

Compiled from Sentencing Transcript, PSI, PACER docket sheet, inmate letters, telephone calls to inmate and family members.

Amanda James

Offense: Conspiracy to Distribute Methamphetamine.
Sentence: 57 months.
Released: November 8, 2004.

Amanda James was twenty-six years old when she was arrested along with twelve others for her participation in a methamphetamine ring in New Mexico. Amanda's connection to the operation was unique in that she was romantically involved with the leader of the group, Michael Santistevan. Thus, while there is no question that she participated in the drug

19

David works mostly with colored pencils and he says that his paintings look very much like oil painted works.

20

January 7, 2007 telephone interview with David Sanchez (notes on file with author).

21

January 9, 2007 telephone conversation with Mary Franco (notes on file with author).

22

January 7, 2007 telephone interview with David Sanchez.

distribution activities from his home, many of her “duties” during the conspiracy involved living with him and taking care of his children.

Based upon the amount of methamphetamine, Amanda faced a five year mandatory minimum. However, the government conceded that she qualified for the “safety-valve” which lowered her Guideline range to 57-71 months. At sentencing, however, her attorney argued for a further downward departure based upon multiple grounds. First, he talked about how Amanda had left home at fifteen, in part, due to her mother’s own substance abuse problems and how she became involved with drugs and then with Santisteven (who she met when she bought methamphetamine from him).²³ Complicating matters further, Amanda became pregnant before her arrest and gave birth to a daughter soon thereafter. However, she entered drug treatment while on pre-trial release and she had made substantial progress combating her addiction. Moreover, she reunited with her mother who was now clean and she even did drug counseling for other addicts. However, because she had one “dirty urine” and admitted that she had ingested drugs while on release, Judge Parker believed that while admirable, Amanda’s post-conviction rehabilitation was still insufficiently “extraordinary” as required by the Guidelines and case law to qualify for a departure.

Second, her attorney argued that the drug quantity attributed to Amanda was the result of the government’s decision to tap her phone and leave the tap on for an extended period of time, exposing her to a greater sentence than her equally culpable co-defendants who received lesser sentences.²⁴ He added that in considering this argument, the judge should take into consideration that she was “under the complete domination of Mr. Santisteven with regard to economic security, emotional security, and all those things that . . . a young woman in Amanda’s situation would cling to.”²⁵

While Judge Parker was sympathetic, counsel had to admit that the evidence was not sufficient to meet the legal standard of coercion and duress. Because the government contested the downward departure claims, Judge Parker believed that under controlling Tenth Circuit precedent he had no choice but to deny the motion on all grounds, noting in particular that

The sad part of all of this is, and I’ve seen this before, I think it is quite apparent that the real problem in all of this [is] with Mr. Santisteven. I think Ms. James, being much younger, was really acting under his influence to a large extent, probably not to the point that she could seek a downward departure . . . for coercion or duress . . . but I certainly think she, had she been living at that residence alone I probably would not be seeing all this. . . . I’ve read the entire transcript of all the telephone conversation,

23

Amanda says that she began using methamphetamine at around seventeen but that her use increased substantially after she became involved with Santisteven when she was twenty one.

24

The telephone tap was apparently in place for six weeks. Defense counsel contended that the government had “hopes to get them into some big drug transactions” or to “snag whoever they could.” James Sent. Tr. (hereinafter “Sent. Tr.”) at 15-16. However, counsel had to concede that there was no intentional manipulation specifically designed to enhance the sentence so that grounds for departure failed as well. Sent. Tr. at 15-18.

25

Sent. Tr. at 9.

I understand what's going on, but I'm still left with the distinct impression that it's really Mr. Santisteven who put Ms. James in this position.²⁶

Nevertheless, during the sentencing hearing, Judge Parker asked the government if it would consider a role adjustment that might lower her sentence but the prosecutor refused. Therefore, Judge Parker felt bound by the law and gave her the low end of the Guideline range of 57 months.

At sentencing, Ms. James apologized for the harm she caused and the trouble that would flow from her incarceration to her family. She had trouble speaking but was able to tell the judge, "I want you to consider that this is the first time I have even been in a prison. I go to school, I am a mom, I'm just really scared."²⁷ After pronouncing the sentence, Judge Parker responded to Ms. James by saying the following

. . . I think the guideline sentences in [regard to] some of these drug offenses are extreme and draconian and I think this is a sentence that's longer than what is necessary, but it's a sentence that under the law I am required to impose. . . . Ms. James, I think you have definitely changed your life and now you're going to go to prison at a time after having done that. It's not something that's easy for a judge to do.²⁸

Of Amanda's co-defendants, only Santisteven received more prison time - 87 months. The rest were given sentences ranging from probation to 37 months. Judge Parker did allow Amanda to self-report to prison where she served her sentence without incident, obtaining about a seven month reduction for completing a BOP drug program.

In a telephone interview, Amanda stated that the first six months out were a bit frightening as she readjusted to the world, and more importantly, worked to establish a relationship with her daughter, Sara, whom she had only seen twice while she was in prison.²⁹ To make things easier, Amanda lived with her mom at first, since she had been looking after Sara, and she also worked for her mother's non-profit organization, the DWI Prevention Center.³⁰

However, after Amanda saved some money, she got her own apartment and started a delivery business that is doing well. She also married a man she knew from long ago and her daughter has accepted him as her father. Her husband is partially disabled but he works as a warehouse manager and the two are currently looking to buy a home for their family.

26

Sent. Tr. at 21-23.

27

Sent. Tr. at 25.

28

Sent. Tr. at 27-28.

29

January 22, 2007 telephone interview with Amanda James (notes on file with author).

30

The DWI Prevention Center provides services to DWI crash victims, prevention programs, statistics and research information and promotes general public awareness. *See* January 19, 2004 email from Amanda's mother, Linda Atkinson (describing her organization and her own path to sobriety and her new relationship with her daughter) (on file with author).

Amanda also reports that her probation officer recommended that her supervised release be terminated early and on January 7, 2007, the court signed the order. When asked how much time she should have gotten for this offense, Amanda was very honest. She says that although she had stopped using when on pre-trial release, she is not certain that if she had been given probation or just a year that she would have been able to resist slipping back into her previous life. She believes that about 24 months, half of what she actually served, would have been sufficient. She says she met a number of very supportive women in prison who helped her build her confidence. She also was able to complete a year of school while incarcerated which was also very beneficial to her recovery. She says that her drug life and prison are a far from her mind as she works to build her future. She is also going to school part-time, with the hope of entering the field of radiology.

Compiled from Sentencing Transcript, PACER docket sheet, email correspondence with former inmate and family member.