

IN THE UNITED STATES COURT  
OF APPEAL FOR THE TENTH CIRCUIT

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*United States of America v. Moon Seals*

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Case No. 24-1028

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**Attachment B**

District court ruling on applicable guideline range

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1 would affect them. From the bottom of my heart, I am beyond  
2 sorry, and I will change for the better of everyone, including  
3 myself. Either in -- in prison or out. I'd also like to  
4 thank everyone for all the support. There are no words to  
5 describe how thankful I am.

6 THE COURT: All right. Thank you, Mr. Moon Seals.

7 All right. Ms. Butterton, I assume you were just  
8 introducing people so I knew who they were. You don't want  
9 any statements -- me to hear statements, do you?

10 MS. BUTTERTON: I don't believe so. Well, I will say  
11 this. I wasn't aware this Court would give them the  
12 opportunity to speak, so I don't think anybody is prepared to.  
13 I can certainly ask them.

14 THE COURT: That's fine. Typically I don't. I just  
15 -- since you went through it, I was wondering if that's what  
16 your intention was, so I just wanted to clarify.

17 MS. BUTTERTON: No. My intention was, Your Honor, so  
18 you knew who was here and what the relationships were.

19 THE COURT: Perfect. Thank you. All right. Thank  
20 you both for your arguments. Thank you, Mr. Moon Seals, for  
21 your statement. After reviewing the briefs and listening to  
22 argument, I have made a decision. Let me just summarize the  
23 parties' argument at least as to what guideline should apply.

24 Mr. Seals asserts this Court should look to Chapter 7  
25 of the sentencing guidelines, specifically Section 7B1.3(b)

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1 for the appropriate sentencing range. Indeed, that provision  
2 would allow the Court to look at the class of the violation  
3 combined with criminal histories and determine a range. In  
4 that case, it would be 3 to 9 months. The Government and  
5 probation has argued that I should sentence in accordance with  
6 the guideline range applicable to the underlying offenses for  
7 which Mr. Seals was originally charged and found guilty of;  
8 namely, 33 to 41 months.

9 To be sure, it appears that I could use either range,  
10 and Chapter 7 in some senses may make sense. I specifically  
11 reject the application of Chapter 7 to this issue for the  
12 following reasons. In this context it would result in what I  
13 would think would be an unwarranted benefit to Mr. Seals. I  
14 was heavily reluctant to give probation. Heavily. I  
15 regretted it the moment I walked out of the courtroom. I  
16 didn't think we would be back here in a week with a violation,  
17 but I knew we would be back. And so given that, I see no  
18 basis to follow that guideline and give him the benefit of  
19 being on probation to lower the sentence range that I was  
20 going to use absent that decision.

21 So I am choosing not to follow -- I acknowledge  
22 Chapter 7. It is advisory. I'm not following it. Frankly,  
23 there's a temptation to just rely on the statutory maximum  
24 range and work within that range. I will not do that. I will  
25 stick to the 33 to 41 months under the original offenses, and

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1 I believe that will be the range that is appropriate here. I  
2 am mindful of the 3553(a) factors, and I'm not unsympathetic  
3 to Mr. Seals' condition.

4 Here's the problem. I see this case very differently  
5 than you all, and I have from the beginning. I am not -- I  
6 don't believe Mr. Seals is intentionally acting this way. I  
7 believe there's something severely wrong here that is not  
8 being addressed. Dr. Moe's report I found to be completely  
9 not reliable, and I'll talk about that more in a minute. But  
10 I reread the prior evaluations of Mr. Moon Seals, and I find  
11 them to be more compelling and more accurate.

12 So I just view this case extremely differently than I  
13 think anybody, except maybe probation. Now, I'm not sure.  
14 But at any rate, I just don't think we're in the same ballpark  
15 of talking about a young man who's got some social isolation  
16 and is just psychologically immature. I do think the  
17 underlying brain condition has caused a problem, and I don't  
18 think it's being addressed, and that concerns me. Is prison  
19 the right place to address it? Probably not. Have the  
20 actions of Mr. Moon Seals mandated that's where it's going to  
21 be addressed? Yes.

22 You just simply cannot get this many chances to  
23 behave. I was surprised the Government was willing to  
24 recommend probation in the underlying case based on how many  
25 times you violated the terms that were governing you then.

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