

Top Court Opens Term, Hears Sentencing Cases

By James Vicini

WASHINGTON (Reuters) - The U.S. Supreme Court opened its new term on Monday, with the government's top courtroom lawyer trying to save the long-standing federal rules used to sentence about 1,200 criminals each week.

In two cases with significant impact for the federal sentencing system, Acting Solicitor General Paul Clement warned of the "carnage and wreckage" that would result from the high court declaring the rules unconstitutional.

The justices by their questions appeared resigned to striking down the federal rules, just as they did in June for a similar state system. But they struggled on how broad the ruling might be and what would replace the guidelines.

Returning to the bench for its 2004-2005 term, the Supreme Court also issued orders in rejecting about 1,800 appeals that piled up during its summer recess.

Among the cases rejected were a free-speech challenge by telemarketers to the government's popular do-not-call list.

The federal sentencing system that Congress mandated in 1984 was thrown into disarray by the court's ruling at the end of its last term that the facts necessary for an increase under state law from the normal sentencing range must be proven to a jury, and not decided by a judge.

The federal guidelines set rules for judges in calculating what punishment to give a defendant and try to reduce wide disparities in sentences for the same crime. The guidelines tell judges which factors can lead to a lighter sentence and which can result in a longer sentence.

SENTENCING WINDFALL SOUGHT

Clement said the lawyers challenging the rules want the court to strike down the guidelines that increase a sentence, but not those that lower a sentence. They "are seeking a huge sentencing windfall," he said.

The two cases involve sentences for drug-related convictions. One case from Wisconsin involved Freddie Booker while the other one from Maine involved Ducan Fanfan.

T. Christopher Kelly, a Wisconsin attorney arguing for Booker, admitted that in some cases there would have to be two trials -- one for the jury to decide the defendant's guilt or innocence and a second one to decide facts for the sentence.

Rosemary Scapicchio, a Boston lawyer representing Fanfan, said the court did not have to throw out 20 years of sentencing reform. She said the guidelines could remain, but the only difference would be the jury and not the judge would have to decide any facts that lengthen a sentence.

Justice Sandra Day O'Connor appeared skeptical of Scapicchio's argument that the unconstitutional part of the guidelines can be severed from the rest of the rules.

"Maybe we should just leave it to Congress to decide because that doesn't sound like the scheme Congress intended," O'Connor said.

Clement said the court's decision may end up as only an interim solution and that Congress may get involved. A ruling in the case is expected next year.

Other cases rejected by the justices included:

-- An appeal by a California Catholic charity of a ruling that it must include prescription contraceptives in its employee health insurance plan even though church teaching condemns artificial birth control as sinful.

-- An appeal by a Qatari national and suspected al Qaeda operative, Ali Saleh Kahlah al-Marri, who is being held in a U.S. military jail in South Carolina as an "enemy combatant."