

District Court Update
by Richard Klugh, Miami, Florida

A district court in Connecticut has published its decision to grant an Apprendi 2255 motion grounded on the unconstitutionality of imposing a mandatory minimum 20-year sentence on a cocaine defendant who faced a guideline range of 188-235 months and whose indictment alleged a 500-gram cocaine quantity that, due to his prior conviction, would expose him to a 10-year, rather than a 20-year mandatory minimum.

Parise v. United States, 2000 WL 1611999 at *5 (D. Conn. Oct. 25, 2000) (vacating sentence under 28 U.S.C. § 2255 and ordering resentencing; “While the 240 months sits within the permitted range for the crime for which Parise was convicted, the justification for enhancing the sentence above the range authorized by the Sentencing Guidelines was a statute under which he was not indicted. The Guidelines range already factored in his criminal history and the Court's finding of 5 kilograms. Thus, by relying on § 841(b)(1)(A) as authority for enhancing the sentence from 188-235 months to 240 months, the Court necessarily made a finding of fact that subjected Parise to a greater sentence than that authorized by the jury's verdict. ... [T]he principles upon which Apprendi relied are equally applicable in the instant case where the criminal penalty involved exceeded that provided by the Sentencing Guidelines.”).