

NATIONAL LEGAL PROFESSIONAL ASSOCIATES

*Margaret A. Robinson Advocacy Center
11331 Grooms Road, Suite 1000
Cincinnati, OH 45242*

Phone: 513-247-0082 • Fax 513-247-9580

Web site: www.NLPA.com • E-mail: contactus@nlpacincinnati.com

MEMORANDUM

TO: ALL INTERESTED DEFENSE COUNSEL AND THEIR CLIENTS

FROM: NATIONAL LEGAL PROFESSIONAL ASSOCIATES

DATE: MAY 10, 2002

NAME: CASTLE

RE: COURT APPLIES SAFETY VALVE AFTER DEFENDANT GOES TO TRIAL!

For nearly 20 years, NLPA has worked hard with defense counsel and their clients in providing legal research and drafting assistance in preparation for sentencing. During this time, the Federal Sentencing Guidelines have gone through many changes and have been applied by the courts with surprising results. NLPA's staff of research attorneys are constantly monitoring the courts' application of the guidelines across the country. One of the positive developments for federal defendants was the enactment of the "Safety Valve" under §§ 5C1.2 and 2D1.1(b)(6) of the Federal Sentencing Guidelines. These provisions work together to provide a two level reduction in a defendant's offense level and (most importantly) allows the court to sentence a defendant below the otherwise minimum mandatory sentence.

In order for a defendant to qualify for application of the Safety Valve, he must satisfy the requirements listed under § 5C1.2. One of these requirements is that the defendant truthfully disclose to the government the information that he knows concerning the offense. This provision often is not applied to a defendant because the probation officer, the government, and the court confuse it with the acceptance of responsibility reduction under § 3E1.1. However, the Safety Valve is different because it does not require a defendant to accept responsibility for the crime and does not require a defendant to plead guilty. NLPA's research in the case of U.S. v Castle, 00-CR-06148 (U.S.D.C., WD NY), is an example of the application of the Safety Valve in just such a situation.

Mr. Castle was charged with conspiracy to distribute marijuana. Mr. Castle did not dispute

most of the facts alleged by the government. However, he did not believe that he was criminal culpable for the offense of conspiracy and proceeded to trial. Mr. Castle consistently maintained that he knew others engaged in criminal conduct and was even present during times when others engaged in criminal conduct. He just did not believe that he was guilty of conspiracy. Unfortunately, Mr. Castle was convicted at trial. To make matters worse, he was subject to a minimum mandatory 60 month sentence.

After his conviction, NLPA worked closely with Mr. Castle's attorney, providing him with research and writing assistance to prepare for his upcoming sentencing. NLPA provided counsel with arguments concerning the fact that Mr. Castle was eligible for relief under the Safety Valve despite the fact he went to trial and that he was eligible for a sentence below 60 months. NLPA's position was that Mr. Castle had admitted to the conduct comprising the offense, he just disputed that his conduct had been construed as a crime.

After careful consideration, the sentencing court agreed with counsel and NLPA and applied the Safety Valve to Mr. Castle; sentencing him below the minimum mandatory 60 months to a term of 46 months imprisonment!

Of course, results such as what Mr. Castle received cannot be expected in every case. However, the combination of a diligent attorney and NLPA's creative approach to research and writing is one of the best ways to minimize a defendant's exposure at sentencing. If you or your client are facing sentencing in federal court and would like NLPA's experienced team of attorneys on your side, please contact NLPA.

NLPA: WE CARE, WE LISTEN, WE GET RESULTS!

**THIS INFORMATIONAL MEMORANDUM IS DESIGNED TO INTRODUCE YOU TO NLPA.
AS NLPA IS NOT A LAW FIRM, PROFESSIONAL SERVICES ARE ONLY PROVIDED
TO LICENSED COUNSEL IN ALL AREAS THAT INVOLVE THE PRACTICE OF LAW.**