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Sentencing/Methamphetamine/Environmental Violation: U.S. District Court Addresses Whether Enhancement was Appropriate

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A United States District Court (North Carolina) addressed in a May 23rd Order whether an attorney provided Petitioner Joseph Irven Powell, Jr. ("Petitioner") effective assistance for failing to object to the application of U.S.S.G. § 2D 1.1(b)13(A).

Petitioner argued:

... there is no proof he violated any of the statutes listed in Application Note 18 regarding his possession of ammonia nitrate, anhydrous ammonia, or any other chemical.

See Joseph Irven Powell, Jr. v. United States of America 2017 WL 2269513.

Petitioner argued that he was prejudiced by his attorney's failure to object to a two-level enhancement under § 2 D 1.1(b) 13 (A) which is applied when:

... the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage or disposal of a hazardous waste.

The Petitioner had pleaded guilty to:

... conspiracy to manufacture, distribute, dispense and possess with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of methamphetamine. . .

Petitioner argued there was no proof he violated any of the relevant environmental statutes that would trigger § 2 D 1.1(b)(13)(A).

The Court rejected this argument noting that:

The evidence showed that Powell received ammonia in tanks and cooked methamphetamine with ammonia and therefore, he was responsible for the unlawful discharge, emission, or release of hazardous or toxic substances in the environment as well as the unlawful storage and disposal of hazardous waste, citing 42 U.S.C. § 6928(d): *cf. United States v. McGee*, 663 F. App'x 262, 264 (4th Cir. 2016).

As a result, the Court found that § 2 D 1.1(b)(13)(A) enhancement was properly applied since testimony "showed that the chemicals and byproducts defendant used in manufacturing methamphetamine all had potential to cause serious harm to human life or the environment when handled improperly."

[A copy of the Order can be downloaded here.](#)