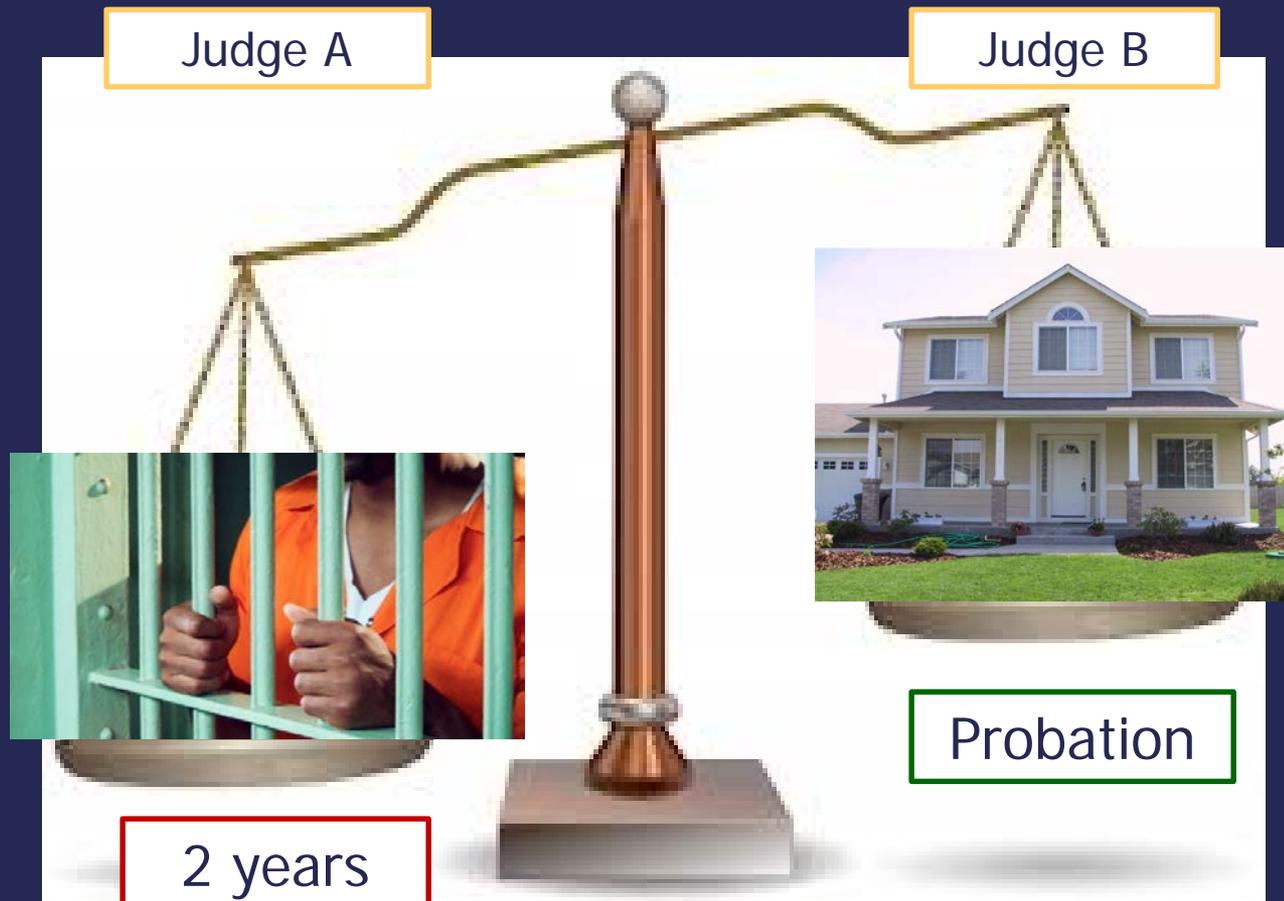


U.S. Struggles with Sentencing Disparities



Average Sentences for White-Collar Crimes in New York

U.S. Sentencing Framework Before 1987



- Total discretion within complete statutory range
- Only available guidance was from probation officer and statistics



Impact of Total Sentencing Discretion

Sentences appear arbitrary and unfair

Breeds resentment among prisoners
(prison riots in 1970's)

Undermines deterrence because unpredictable



U.S. Sentencing Framework After 1987

- 1987: Reviewed 10,000+ sentences, created first **MANDATORY** Sentencing Guidelines



- 2005: Supreme Court rules that Sentencing Guidelines are only **ADVISORY**, not ~~mandatory~~



U.S. v. Booker, 543 U.S. 220 (2005)

Sentencing Procedure in the U.S. Today

Four Steps

1. The Presentence Report

2. Guidelines Calculation

3. Consider Individual Factors (18 U.S.C. § 3553)

4. Impose Sentence





Step 1: The Presentence Report (PSR)

- Written by U.S. Probation Office
- Characteristics of the offence
- Defendant's personal background
- Calculates Guidelines and recommends sentence
- Parties may challenge facts and conclusions



PSR's contents: <http://www.fd.org/docs/select-topics---sentencing/the-presentence-investigation-report.pdf>



Step 2: Advisory Guidelines Calculation

Federal Sentencing
Guidelines Manual

2012



United States Sentencing Commission



- A: Calculate offence level
- B: Calculate criminal history points
- C: Calculate advisory sentence



Step 2A: Calculate Offence Level

EXAMPLE



Defendant convicted of selling drugs

■ Sold 0.5 kg cocaine	26
■ Minor role (courier)	- 2
■ Sold to prisoners	+2
■ Carried gun	+2
■ Accepted responsibility / pled guilty - 3	
Total offence level	= 25



Step 2B: Calculate Criminal History Points

■ Lewd Vagrancy: +1

■ Shoplifting: +1

■ Counterfeit dealing: +3

Total points = 5

WESSOCK, Gaylord Ernest CII Number 620939
 alias:
 Roger Steed, Roger Steele
 Date of Birth: 12/18/1929
 California Drivers License No: Y-519674

Date of Arrest	Arrest Place	Name	Offense & Disposition
8/21/48	PD LA 122998	Gaylord E Wessock	Susp. 459 PC Burglary
4/7/56	PD LA 122998	Gaylord E Wessock	Drunk Driving, MSD
4/8/57	PD LA 122998-W	Gaylord E Wessock	Susp. Burglary
4/11/57	PD LA 122998-W	Gaylord E Wessock	484 PC §500. Bail 6/27/57 90 days susp. 2 years probation & 350.00 fine (Theft)
10/26/57	PD LA 122998-W	Gaylord E Wessock	88.13.B Mun.Code
12/29/57	PD Torrance 14241	Gaylord E Wessock	Burbank Traffic Warrant
11/15/58	PD LA 122998-W	Roger Steed	Lewd Vagrancy 12/2/58, count 1 dismissed 415 PC and 350.00 or 10 days. Fine paid.
9/28/59	PD Pasadena 47942	Roger Steele	Shoplifting 9/29/59, 30 days suspend 3 years probation with conditions; pay 587.75 or 15 days in jail
5/6/60	So.LAD 386536	Gaylord E Wessock	Burglary
11/6/60	PD Natl City 22434	Gaylord E Wessock	Possession & Passing of Counterfeit U.S. Currency. Hold for U.S.
11/7/60	S. San Diego 189940	Gaylord E Wessock	Possession & Passing of Counterfeit U.S. Currency. On 2/21/61 sentenced in U.S. Court to serve 7 years each of 2 counts. Concurrently
11/15/60	US Marshal, LA 30155	Gaylord E Wessock	Mail Fraud
1/7/74	PD LA 122998-W 2739186	Gaylord E Wessock	23102 A VC Driving under the influence of alcohol WT 3160470



Step 2C: Calculate Advisory Guidelines Sentence

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210

Criminal History: 5

Advisory Guidelines Sentence: 70-87 months

Offence Level 25



Step 3A: Consider Individual Factors

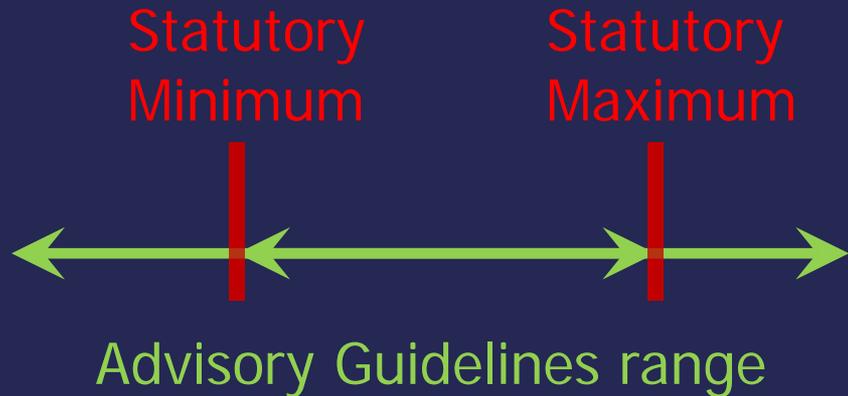
1. Nature & circumstances of the offence
2. History & characteristics of Defendant
3. Need for punishment, respect for law
4. Deterrence
5. Protection of public
6. Rehabilitation
7. Policy statements by the Sentencing Commission
8. Avoid unwarranted sentencing disparities



See 18 U.S.C. § 3553(a)



Step 3B: Other Considerations



- Sentence cannot exceed statutory minimum or maximum
- Defendant has the right to speak
- Both sides argue for suggested sentence (unless plea agreement has agreed sentence)

Scenario #3

What sentence would you impose?



Defendant, along with others, robbed victim of 500 KES and pair of shoes valued at 1,400 KES. The group also savagely cut victim with a panga, causing major injuries. Defendant charged with violent robbery, but magistrate convicted him of causing grievous harm. Defendant argues for sentence of 3 years. DPP argues for life.

Scenario #3

What sentence would you impose?

- Magistrate sentenced him to 3 years
- High Court overturned charge reduction, convicted him of violent robbery, and resentedenced to life
- Court of Appeal upheld charge reduction and resentedenced to 7 years. *Muharia v. Republic (H.C. Cr. Appeal No. 42, 2004)*

Scenario #4

What sentence would you impose?



Defendant attempted to smuggle 439 pieces of worked ivory worth 430,000 KES. Defendant argues for 20,000 KES fine, no jail. DPP argues for 40,000 KES fine, 5 years. Statute allows maximum of 10 years and 40,000 KES fine.

Scenario #4

What sentence would you impose?

- Magistrate imposed fine of 30,000 KES and no imprisonment
- Sentence was appealed
- The new 2013 Wildlife Conservation and Management Act raises the maximum sentence to life imprisonment and/or a maximum fine to 20 million KES

Scenario #5

Pekei Shoke was arrested in October 2012 for killing famous Amboseli elephant matriarch, Qumquat, and her two daughters for their tusks. Pekei was charged under the old Wildlife Act.

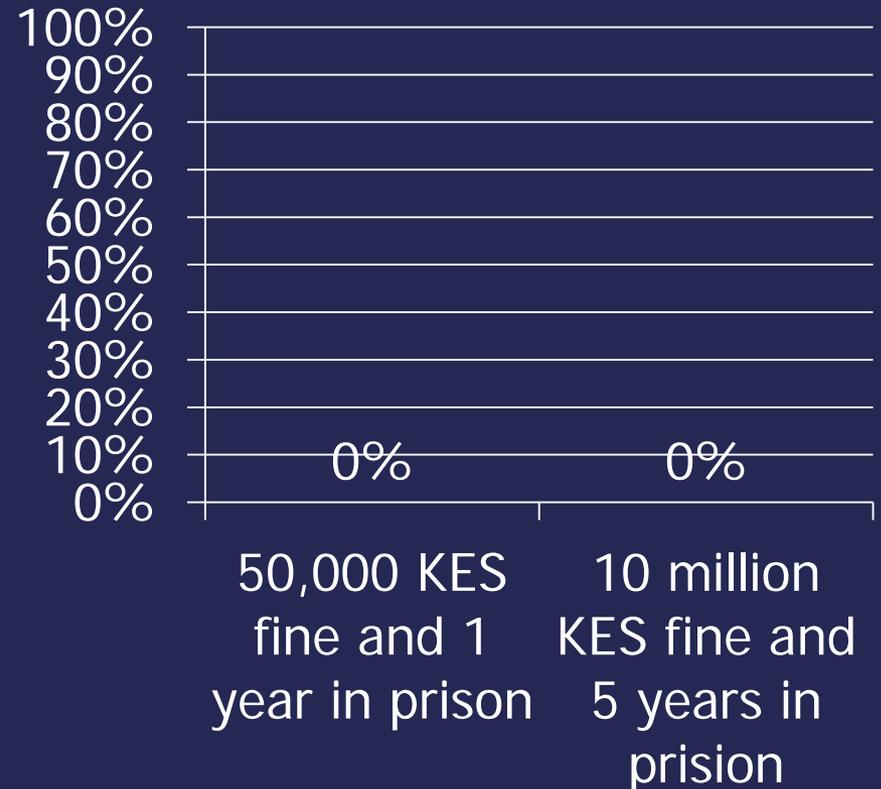
What sentence would you impose?



Scenario #5

What sentence would you impose?

1. 50,000 KES fine and 1 year in prison
2. 10 million KES fine and 5 years in prison



Scenario #5

What sentence would you impose?

- Pekei was sentenced to one year in prison and a fine of 50,000 KES under the 1976 Wildlife Conservation and Management Act.
- “Pekei has received the maximum fine possible in that old context. Jail time was very rare under the old act, and the judge has been as severe as she could be in this case.” *Qumquat and Family’s Killer Finally Jailed*, Big Life Foundation (14 May 2015)

Scenario #5

What sentence would you impose?

- Under the 2013 Wildlife Conservation and Management Act, Pekei could have faced penalties of:
 - a fine up to 20million KES; or
 - up to life in prison; or both



Scenario #6

What sentence would you impose?

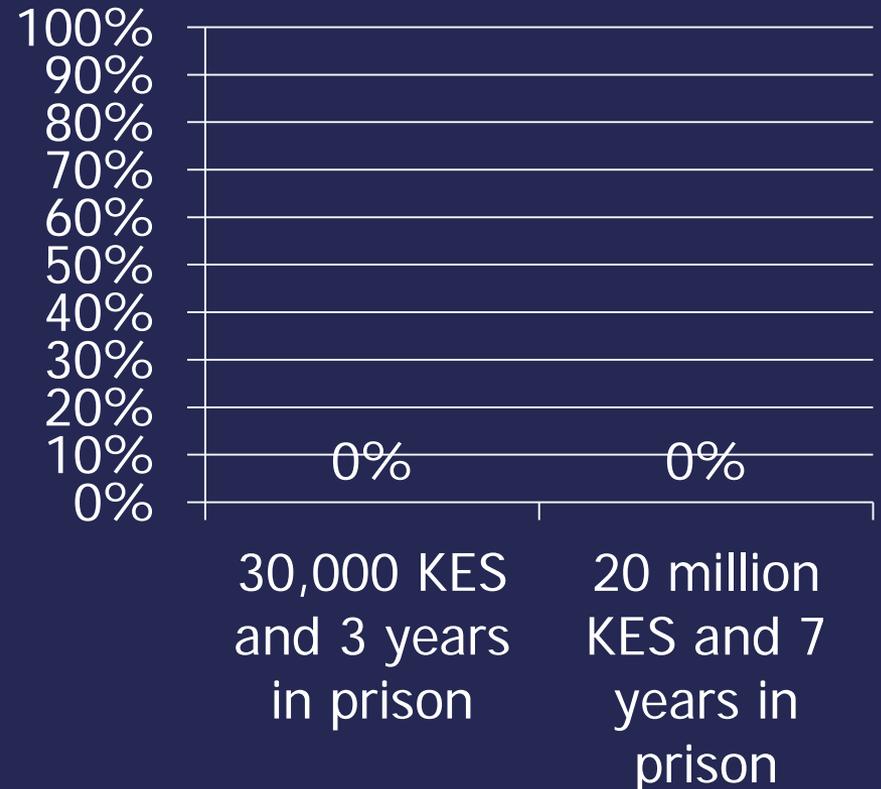


Tang Yong Jian, from China, was arrested at Kenya's Jomo Kenyatta International Airport after discovering he had 3.4 kg of raw ivory hidden in his bag. He pleaded guilty to the smuggling charge.

Scenario #6

What sentence would you impose?

1. 30,000 KES and 3 years in prison
2. 20 million KES and 7 years in prison



Scenario #6

What sentence would you impose?

- First conviction under 2013 Wildlife Conservation and Management Act
- Magistrate imposed a fine of 20million KES (\$233,000 USD) or 7 years in prison
- "It's the harshest sentence handed down yet to a convicted wildlife trafficker since Kenya's new wildlife law." *Kenya's New Wildlife Law Cracks Down on Wildlife Crime*, African Wildlife Foundation (29 January 2014).

Scenario #6

What sentence would you impose?

- Under the 1976 Wildlife Conservation and Management Act:
 - Only a fine of up to 20,000-30,000 KES; or
 - imprisonment up to 5 years; or both



Scenario #7

Beimei Chen was charged with being in possession of game trophies without certificate ownership (Count I), dealing in game trophy without a dealer's license (Count II), and failing to report possession of game trophy (Count III) totaling an estimated value of 1.22 million KSE.

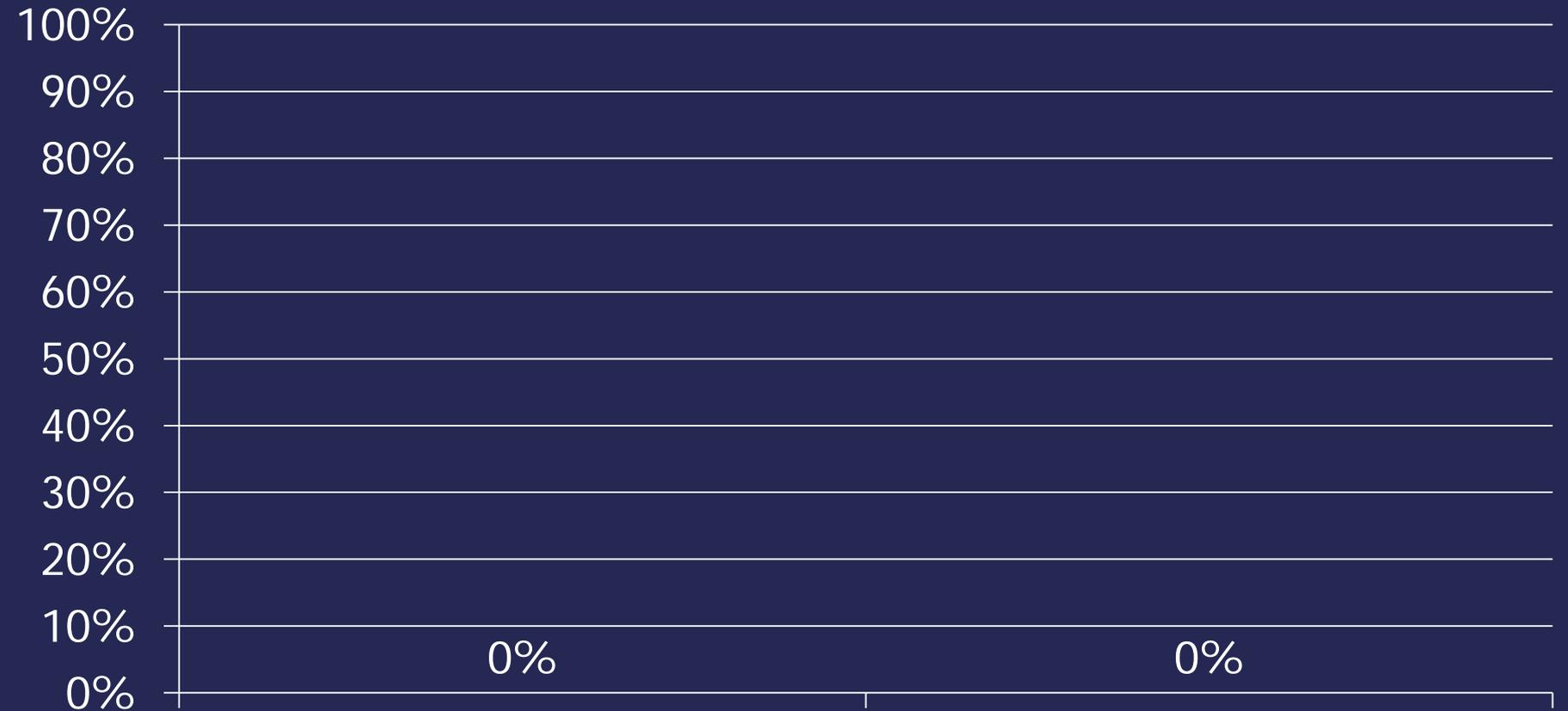
What sentence would you impose?



Scenario #7

What sentence would you impose?

1. Count 1: 8 months; Count 2: 15 months; Count 3: 8 months.
2. Count 1: 3 years; Count 2: 5 years; Count 3: 5 years.



Count 1: 8 months; Count 2: 15 months; Count 3: 8 months.

Count 1: 3 years; Count 2: 5 years; Count 3: 5 years.

Scenario #7

What sentence would you impose?

- Chen plead guilty and was sentenced to serve 8 months for Count I, 15 months for Count II, and 8 months imprisonment for Count III.
- “The sentences imposed are not demonstrably harsh or manifestly excessive. The sentences imposed by the trial Court *are within the law which provides for maximum custodial sentences of up to 3 years in Count I, 5 years in Count II and 5 years in Count III respectively.*” *Biemei Chen v Republic (H.C. Cr. Appeal No. 136, 2013)*