

Typo Cuts Drug Offender's Prison Term

- Story Highlights
- Error on verdict form casts doubt on jurors' intent, Ohio appeals court rules
- Decision means Calvin Wells must serve just one year, not 10
- Legal issue elsewhere may have him transferred to New Jersey

By Jim Kavanagh

The Importance of Proofreading!

(CNN) -- A three-letter typo has slashed years off a prison sentence for a repeat drug offender in Ohio.



Calvin Eugene Wells discovered a discrepancy on the verdict form for his conviction.

Calvin Eugene Wells of Akron was sentenced in October 2005 to 10 years in prison after being convicted of possessing more than 100 grams of cocaine, a first-degree felony.

Or so it seemed.

While serving his time, Wells discovered a stray word on the verdict form signed by the jurors who convicted him in Summit County Common Pleas Court. The form, typed up by a court or prosecutor's office employee, read:

"We, the Jury, find the Defendant Guilty of the offense of POSSESSION OF CRACK COCAINE.

"We, the jury, further find that the amount of crack cocaine WAS in the amount exceeding ten one hundred (100) grams as charged in the indictment."

The word "ten" in the second sentence is extraneous.

Wells brought the error to a succession of attorneys' attention, but no one managed to turn it to his advantage until Jason Desiderio was appointed to represent him.

"I have never seen anything like this in my life, where just attorney after attorney did nothing," Desiderio said.

"I think he had four appellate attorneys, and one appeal ... It's a very, very bizarre case."

Under Ohio law, for a person to be found guilty of a higher-level felony, the jury form must state either the degree of the offense or the circumstances that would make it

a higher offense. The form's second sentence apparently was an attempt to state those circumstances, but the stray word muddled the meaning, Desiderio said.

A three-judge panel of the Ohio Court of Appeals unanimously agreed.

"The form is unclear, and we cannot determine what the jury understood 'ten one hundred (100) grams' to mean," Judge Eve Belfance wrote in the court's decision. "It certainly could have meant an amount exceeding one hundred grams, but it is possible the jury believed the form actually meant an amount exceeding less than one gram." Read the whole opinion.

The uncertainty meant Wells could be convicted of nothing more than a fifth-degree felony, the judges ruled. The maximum sentence for a fifth-degree felony is one year, and Wells already had served four. Game over.

But not quite.

It seems Wells is wanted in Morris County, New Jersey, on a November 2000 sheriff's warrant for violating his probation for drug and weapons convictions. The sheriff is seeking extradition, spokeswoman Staci Santucci said. It's unlikely he'll be able to avoid it, said Desiderio, who will not be able to represent Wells because he's not licensed in New Jersey.

The original judge in the Ohio case, James R. Williams, is retired. The Summit County prosecutor's office did not return calls seeking comment on Wells' case.

"At the end of the day, he was convicted, and I understand that some people are going to feel upset that he's essentially out six years earlier than anyone anticipated," Desiderio said.

"But in our system, we give the benefit of the doubt to the defendant, and we do that for good reason. And in here there's a statutory mandate to ensure that we know what we're convicting people of and we know why we're doing it. And that mandate wasn't met."