

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES BONINI
CLERK

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IN RE: PROCEDURES FOR THE
IMPLEMENTATION OF THE
RETROACTIVE AMENDMENT TO
THE SENTENCING GUIDELINES,
REDUCING THE 100-1 DISPARITY
BETWEEN COCAINE BASE
(CRACK COCAINE) AND POWDER
COCAINE

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General Order No. 08-03

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

I. Background

The United States Sentencing Commission, having unsuccessfully advocated for years that Congress reduce the 100-1 statutory disparity in the punishments imposed for crack cocaine and powder cocaine offenses, acted within its own authority to modify in the Sentencing Guidelines the drug quantity base offense levels of crack cocaine in the Drug Quantity Table, effectively reducing that disparity in the Sentencing Guidelines by two base offense levels. The reduction is an extremely important Amendment (No. 706) to the Sentencing Guidelines that can have a very significant effect upon the sentences imposed under the Guidelines in certain crack cocaine cases since November 1, 1987. The Amendment became effective November 1, 2007. The Commission, after receiving extensive public comment, decided on December 11, 2007 to make Amendment 706 retroactive, effective March 3, 2008.

Under the provisions of 18 U.S.C. § 3582(c)(2), a district court, under these circumstances, may reduce a defendant's term of imprisonment after considering the factors set forth in 18 U.S.C. § 3553(a) to the extent that they are applicable, if such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission.

For the guidance of the courts in the implementation of the retroactive application of the Amendment, the Commission promulgated a policy statement supplement to U.S.S.G. § 1B1.10 which sets forth the procedures to be employed in the implementation of the retroactive Amendment. The Commentary to this policy statement provides that the court, in determining whether a reduction in the term of imprisonment is warranted, shall consider the factors set forth in 18 U.S.C. § 3553(a) and the nature and seriousness of the danger to any person or the community that may be posed by such a reduction. The court may also consider the post-sentencing conduct of the defendant.

The Probation Office of this District, in a preliminary review of many of the previously imposed sentences in crack cocaine cases, has estimated that there are numerous cases in which a previously sentenced defendant may be eligible to receive the benefit of this change in the Drug Quantity Table. The purpose of this General Order is to set forth the procedures that this Court intends to follow in order to comply with 18 U.S.C. § 3582(c)(2), 18 U.S.C. § 3553(a), and U.S.S.G. § 1B1.10, and to resolve these cases in an expeditious and just manner.

II. The Appointment of Counsel

The Federal Public Defender has been appointed to represent the interests of all federal prisoners previously sentenced in this District who may be eligible for sentence reductions pursuant to the amended retroactive sentencing guidelines. See General Order No. 08-02.

III. The Facilitation of Case Review

Well in advance of the effective date of March 3, 2008, the Federal Public Defender, attorney for the defendants who may be eligible for sentence reduction, and the First Assistant United States Attorney, attorney for the plaintiff, the United States of America (hereafter referred to as the Parties), with the assistance of the Chief Probation Officer, commenced a preliminary review of cases

involving defendants who may be eligible for a sentence reduction. This review includes the previously computed imprisonment range, the current projected release date, and the newly computed imprisonment range. Application of the factors listed in 18 U.S.C. § 3553(a) and in the supplement to § 1B1.10 is also considered. Although the preliminary review of all cases has not been completed, the Parties, thus far, have identified, by their agreement, certain cases in which defendants may be eligible for a reduced sentence.

In order to facilitate the Court's review of all cases to determine whether the defendants are, in fact, entitled to reduced sentences, the Parties shall place each case in one of two categories: (1) agreed disposition cases and (2) disputed disposition cases.

A. Agreed Disposition Cases

If the Parties agree regarding a defendant's eligibility for a reduced sentence and the extent of the reduction that they will recommend to the Court, the defendant shall file in the original case an unopposed motion for reduction of the defendant's sentence. If, after an independent review of the case, the Court agrees with the recommended new sentence set forth in the motion, the Court will enter an appropriate order reducing the defendant's sentence. In the event that the unopposed motion concerns the sentence of a defendant who would be subject to being released on March 3, 2008 or within 30 days thereafter, the Parties shall immediately notify the sentencing judge of this fact. An agreed disposition case may be placed on the Expedited Action Docket after this time if warranted under the provisions of that Docket, as described in Section IV of this Order. If the Court does not agree with the recommendation set forth in the motion, the Court may decide the merits of the issues in question at that time or may refer the case to the Probation Office in accordance with the procedures set forth in Section III.B of this Order.

If the Parties agree that the defendant is not eligible for a reduced sentence, the Federal Public Defender shall so advise the defendant and provide the defendant with the reasons for this determination.

B. Disputed Disposition Cases

If the Parties do not agree regarding the defendant's eligibility for a reduced sentence or, if eligible, do not agree regarding the extent of a reduction, the disagreement shall be referred to the Probation Office. A Probation Officer shall provide to the sentencing judge a copy of the Presentence Investigation Report, together with an Addendum to the Presentence Investigation Report. The Addendum shall contain an analysis of the defendant's eligibility to receive a sentence reduction and, if eligible, an application of the factors listed in 18 U.S.C. § 3553(a), the factors listed in the supplement to U.S.S.G. § 1B1.10, the post-sentencing conduct of the defendant, a newly computed imprisonment range, a response to the disputed issues referred to the Probation Office, and a recommendation of the Probation Officer regarding any reduced sentence. The Probation Office shall provide one copy of the Presentence Investigation Report and the Addendum to the United States Attorney or his designee and shall provide two copies of those documents to the Federal Public Defender or his designee, or to another defense attorney if one has been appointed or retained. The Addendum shall be sealed and disclosed to no person other than the designated attorneys and the defendant.

Any objection to the Addendum or recommendation must be submitted to the sentencing judge by the objecting party within 10 days from the date the objecting party receives the Addendum. Any response by the other party to the objection must be submitted to the sentencing judge within 10 days from the date of the receipt of the objection. These time periods may be changed by the

sentencing judge *sua sponte* or on motion by one or both of the parties. The sentencing judge also may request memoranda from the parties, oral arguments, or additional information from the Probation Officer if the judge is of the opinion that such information would be helpful to the Court.

IV. The Prioritization of Cases

In order to ensure that eligible defendants receive the full benefit of any applicable sentence reduction, the Parties, in light of their preliminary review described in Section III of this Order, shall place all cases on either (1) the Expedited Action Docket or (2) the Standard Action Docket.

A. The Expedited Action Docket

If, in any disputed disposition case or in any agreed disposition case, a decision must be made expeditiously in order to give the defendant the full benefit of a warranted reduced sentence prior to the defendant's current release date, the Parties shall place the case on the Expedited Action Docket of the sentencing judge and immediately call such a case to the attention of that judge.

B. The Standard Action Docket

Cases not required to be placed on the Expedited Action Docket shall be placed on the Standard Action Docket for consideration by the sentencing judge as his or her schedule permits. A party may move to have a case transferred to the Expedited Action Docket if there are unusual circumstances that would warrant such a transfer.

V. Letters from Defendants

The Court anticipates that it may receive numerous letters from defendants requesting reductions in their sentences pursuant to the retroactive amendment. The Court intends to treat these letters as motions for a reduced sentence. The Court will inform the defendant that the Federal Public Defender's office has been appointed to represent the defendant. The Court will forward

copies of such letters to Counsel for their consideration in the facilitation of case review process described in Section III of this General Order.

VI. Sentencing Hearing and Presence of the Defendant

As a general rule, sentencing hearings will not be held. The sentencing judge, however, may schedule a hearing if, in the opinion of the judge, such a hearing is needed. If the judge determines that a hearing is needed, the judge will determine whether the defendant needs to be present at the hearing and, if so, whether the appearance will be in person or by videoconferencing.

VII. Amended Judgment

Following the entry of an Order granting a motion for reduction of sentence, the sentencing judge will file an Amended Judgment reducing a defendant's sentence in accordance with the Order.

VIII. Cases of Judges No Longer Available

If the sentencing judge is deceased or is no longer an active or senior judge of this Court and the case has not been previously reassigned to another judge, the crack cocaine cases of the judge no longer available shall be assigned to the active and senior judges of this Court by the Clerk under the random draw procedures used by this Court.

IT IS SO ORDERED.

/s/ Sandra S. Beckwith - per email 2/15/08
Chief Judge Sandra S. Beckwith
United States District Court

/s/ Edmund A. Sargus - per email 2/15/08
Judge Edmund A. Sargus
United States District Court

/s/ Susan J. Dlott - per email 2/15/08
Judge Susan J. Dlott
United States District Court

/s/ Algenon L. Marbley - per email 2/15/08
Judge Algenon L. Marbley
United States District Court

/s/ Thomas M. Rose - per email 2/15/08
Judge Thomas M. Rose
United States District Court

/s/ James L. Graham - per email 2/15/08
Judge James L. Graham
United States District Court

/s/ Gregory L. Frost - per email 2/15/08
Judge Gregory L. Frost
United States District Court

/s/ Walter H. Rice - per telephone 2/22/08
Judge Walter H. Rice
United States District Court

/s/ Michael H. Watson - per email 2/15/08
Judge Michael H. Watson
United States District Court

/s/ Michael R. Barrett - per email 2/15/08
Judge Michael R. Barrett
United States District Court

/s/ S. Arthur Spiegel - per email 2/19/08
Judge S. Arthur Spiegel
United States District Court

/s/ John D. Holschuh - approved 2/15/08
Judge John D. Holschuh
United States District Court

/s/ Herman J. Weber - per fax 2/20/08
Judge Herman J. Weber
United States District Court

/s/ George C. Smith - per telephone 2/15/08
Judge George C. Smith
United States District Court