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February 26, 2008 8:30 AM

RONALD C. WESTON, SR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: _____/_____

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In Re: MOTIONS FOR SENTENCE)
MODIFICATION UNDER)
18 U.S.C. § 3582(c)(2))
_____)

Administrative Order

No. 08-019

At a special meeting conducted on February 21, 2008, the district judges of this Court adopted guidelines for the handling of motions for sentence modification under 18 U.S.C. § 3582(c)(2) arising from the retroactive application of Amendments 706 and 711 of the Federal Sentencing Guidelines. A copy of the procedure adopted by the Court is attached to this order, along with copies of form motions to be used in such cases. All attorneys and *pro se* parties filing such motions must adhere to the attached procedures, unless a judge of this Court orders an exception in a particular case.

The Clerk is directed to make these materials available to the public on the Court's website and at the Clerk's divisional offices.

IT IS SO ORDERED.

For the Court:



Robert Holmes Bell
Chief United States District Judge

Dated: February 26, 2008

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

**PROCEDURES FOR HANDLING MOTIONS FOR
SENTENCING MODIFICATIONS UNDER 18 U.S.C. § 3582(c)(2)**

This memorandum sets forth the procedures adopted by the United States District Court for the Western District of Michigan for consideration of motions by defendants for sentence modifications arising from Amendments 706 and 711 of the United States Sentencing Guidelines. These amendments, effective March 3, 2008, retroactively modified the Drug Quantity Table with regard to cocaine base (crack cocaine). These procedures are intended to govern the expeditious handling of motions for sentence modification in the majority of cases; an individual judge, however, is free to alter these procedures to address the circumstances of any particular case.

As used in this memorandum, an *eligible defendant* means: (1) a person serving a term of imprisonment under a criminal judgment issued by this court; (2) whose sentencing guideline offense level was computed in whole or in part by reference to a quantity of crack cocaine; and (3) whose guideline range is lowered by application of Amendments 706 and 711 of the U.S. Sentencing Guidelines.

I. FORM AND FILING OF MOTIONS

A. Form of Motions

Motions must be filed on the court-approved form. No memorandum of law or attachments may accompany the motion. Non-conforming motions will be returned to the submitting party by order of court.

B. Filing of Motion

1. By the Federal Defender -
 - a. E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office;
 - b. The motion will include a request for appointment of FPD and financial affidavit.

2. By a panel attorney who represented defendant at sentencing or on appeal -
 - a. E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office;
 - b. The motion will include a request for appointment of the panel attorney and financial affidavit.
3. By retained counsel - E-filed, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office.
4. By a *pro se* defendant -
 - a. Filed on paper and scanned into the CM/ECF system, with a copy automatically sent by CM/ECF to the U.S. Attorney's Office;
 - b. May request appointment of counsel in body of the form motion.

C. Appointment of Counsel

Appointment of counsel is discretionary with the court at any stage of the proceedings.

II. INITIAL CONSIDERATION

A. Initial Review

1. Immediately upon filing, the judge's office will review the motion to determine whether the defendant has been previously identified by the Sentencing Commission or the Administrative Office as an inmate potentially affected by Amendments 706 and 711.
 - a. If so, the court will move to Step B.
 - b. If not, the case will be referred to Probation for a review of the file, to determine whether the movant is an *eligible defendant*. This report should be filed within 7 business days, unless the Probation Office file is in storage.

- c. The Probation Office will file a short report, which will be served on the parties, stating whether or not the movant appears to be an *eligible defendant* and the basis for that conclusion. Any party objecting to the conclusion of the Probation Office must file the objection within 14 days of service.
2. If the defendant is clearly ineligible, the court may dismiss the motion. If the court determines that the movant may be an *eligible defendant*, the court will move to Step B.

B. Triage of Motions

1. Motions by potentially *eligible defendants* with release dates before January 1, 2012, will receive priority, and the court will immediately move to Step C.
2. Motions by potentially *eligible defendants* with release dates on and after January 1, 2012, will be held in abeyance. The court will reach those motions, moving to Step C, as more urgent cases are decided.

C. Issuance of Order for Sentence Modification Report

1. The court will order the Probation Office to prepare a Sentence Modification Report, addressing the following issues:
 - a. a brief procedural history of sentencing decisions, including whether the original sentence was imposed pursuant to *Booker*, reflected any departures or variances, or was reduced under U.S.S.G. § 5K1.1 or Rule 35(b);
 - b. the original Guideline calculation and a recalculation of the Guideline range in accordance with U.S.S.G. § 1B1.10(b)(1);
 - c. a statement whether the movant is an *eligible defendant* and the basis for that conclusion;
 - d. any information readily available to Probation from the BOP concerning defendant's post-sentencing conduct or misconduct;

- e. any information available to Probation concerning the danger to any person or the community that may be posed by a reduction in defendant's sentence;
 - f. a recommendation for disposition of the motion.
2. The U.S. Probation Office will be directed to prepare Sentence Modification Reports in a sequence consistent with projected release dates of the moving defendants, assuring those defendants eligible for imminent release are addressed first by the Court. Once all requested reports for inmates with projected release dates before January 1, 2012, are submitted to the Court, the U.S. Probation Office will prepare reports for moving defendants with release dates on or after January 1, 2012, in a sequence reflecting their projected release dates.
 3. Upon request, the Probation Office will provide a copy of the original Presentence Investigation Report to either party.

D. Submissions by the Parties

1. Defendant (or counsel) will have 21 days after service of the Sentence Modification Report to file a brief and supporting documents, addressing any legal or factual issue relevant to the motion for reduction of sentence.
2. Within 21 days of service of defendant's brief, the Government may file its brief and supporting materials, addressed to the same subjects.
3. Submissions in support of or in opposition to a motion must not exceed 20 pages, including attachments.
4. At any time before a decision on the motion, the parties may file with the court a joint recommendation for disposition of the motion, understanding that the ultimate decision is in the court's discretion.

E. Hearing

A hearing will be scheduled only if the court determines that a genuine issue of material fact must be resolved or that oral argument will be beneficial to the court. A defendant's presence for sentence modification is not required by the Federal Rules of Criminal Procedure. FED. R. CRIM. P. 43(b)(4). If either party seeks a hearing or defendant's personal presence, the party's brief must specifically request such relief and give reasons in support.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Defendant.

File No. _____

Hon. _____

Motion for Modification or Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2)

Defendant, through his counsel, hereby requests a modification or reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendments 706 and 711 to the United States Sentencing Guidelines, which made a reduction in the base offense level for crack-cocaine offenses retroactive as of March 3, 2008. In support of this motion, defendant states as follows:

1. I am serving a term of imprisonment.
2. My sentence was based, at least in part, on crack cocaine. _____ (Yes or No)
3. I was sentenced in the Western District of Michigan on _____ (date) to a term of _____ months in prison. My total offense level was _____ and my criminal history category was _____.
4. My projected release date is _____.
5. I hereby request a court-appointed attorney. _____ (Yes or No)
If yes, please complete the Financial Affidavit available on the Court's website at www.miwd.uscourts.gov. (Note: appointment of counsel is discretionary with the Court.)

PLEASE DO NOT ATTACH ANY OTHER MATERIALS AT THIS TIME OR YOUR MOTION WILL BE REJECTED AND RETURNED. IF APPLICABLE, SUBMIT THE FINANCIAL AFFIDAVIT TO THE COURT ON PAPER.

Counsel for Petitioner

Date: _____

Name: _____

Address: _____

Telephone Number: _____ Email Address: _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Defendant.

File No. _____

Hon. _____

Motion for Modification or Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2)

I hereby request a modification or reduction of my sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendments 706 and 711 to the United States Sentencing Guidelines, which made a reduction in the base offense level for crack-cocaine offenses retroactive as of March 3, 2008, and in support of my motion state as follows:

1. I am serving a term of imprisonment.
2. My sentence was based, at least in part, on crack cocaine. _____ (Yes or No)
3. I was sentenced in the Western District of Michigan on _____ (date) to a term of _____ months in prison. My total offense level was _____ and my criminal history category was _____.
4. My projected release date is _____.
5. I hereby request a court-appointed attorney. _____ (Yes or No)
If yes, please complete the attached Financial Affidavit.
(Note: appointment of counsel is discretionary with the Court)

WITH THE EXCEPTION OF THE FINANCIAL AFFIDAVIT, PLEASE DO NOT SUBMIT OR ATTACH ANY OTHER MATERIALS AT THIS TIME OR YOUR MOTION WILL BE REJECTED AND RETURNED.

Signature of Petitioner: _____ Date: _____

Print or Type Name: _____ Register #: _____

Current Address: _____