

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

RE: STANDING ORDER ADOPTING  
PROCEDURES FOR PETITIONS  
SEEKING RETROACTIVE APPLICATION OF THE  
2023 CRIMINAL HISTORY AMENDMENTS



ORDER

On April 27, 2023, the United States Sentencing Commission submitted to Congress a multi-part proposed criminal history amendment, which will be designated as Amendment 821 in Appendix C to the *Guidelines Manual*. Part A of the amendment addresses status points, decreasing them by one point for individuals with seven or more criminal history points and eliminating status points for those with six or fewer criminal history points. Subpart 1 of Part B creates a new §4C1.1 guideline that provides a decrease of two offense levels for “Zero-Point Offenders” (those with no criminal history points) whose offense did not involve specified aggravating factors.

On August 24, 2023, the Commission voted to give retroactive effect to Parts A and B, subpart 1 of the criminal history amendment. Recognizing that the courts, probation officers, and the Bureau of Prisons would need time to process motions and prepare release plans, the Commission also decided to require that any reduction in the term of imprisonment based on retroactive application of Amendment 821 not be effective until February 1, 2024, or later. (See Amendment 825 to USSG §1B1.10, effective November 1, 2023). This retroactivity produces the opportunity for offenders to file petitions under 18 U.S.C. §3582(c)(2) seeking sentence reductions. In addition, sentences may be reduced based upon these amendments on the motion of the court.

In either instance, an order reducing a term of imprisonment based upon retroactive application of Amendment 821 must have an effective date of February 1, 2024, or later.

The criminal history amendment will become effective on November 1, 2023, provided that Congress does not act before that date to reject or modify the amendment.

After due consideration by the Judges in this District, it is hereby **ORDERED** that the following procedures be implemented in anticipation of the large number of these petitions that are likely to be filed in this district:

**I. IDENTIFICATION OF POTENTIALLY ELIGIBLE OFFENDERS**

- a. In addition to petitions filed by offenders, the United States Probation Office, working with the Federal Public Defender, will compile a list of potentially eligible offenders.
- b. This list of petitioning offenders and others who may be eligible will be given to the Chief Judge, who will divide the list and forward it to the respective District Judges to whom the cases will be assigned.
- c. For each offender, the Probation Office will prepare the following materials and forward them to both the District Judge and the United States Attorney's Office:
  1. The original Presentence Investigation Report;
  2. The original Judgment and Commitment Order and Statement of Reasons;
  3. The plea agreement, if any; and
  4. An addendum to the Presentence Investigation Report providing an analysis of the offender's eligibility for consideration for a reduction, a summary of the available information on the conduct of the offender while incarcerated, and a recalculation of the applicable guidelines pursuant to the criminal history amendments.

## **II. DESIGNATION OF OFFENDERS FOR EXPEDITED CONSIDERATION**

The District Judge will review the materials provided by the Probation Office to determine which cases should be designated for Expedited consideration. Expedited consideration may be given to any offender. If the offender is not given Expedited consideration, the case may proceed to the Standard procedure.

## **III. EXPEDITED CONSIDERATION**

- a. If the District Judge designates a case (or list of cases) for Expedited consideration, the District Judge will enter the form order notifying the United States Attorney's Office of its designation and giving the United States Attorney's Office seven calendar days, excluding federal holidays, to raise any objection to a reduction.
- b. If the United States Attorney's Office objects, the District Judge may:
  1. Overrule the objection and proceed with Expedited consideration; or
  2. Refer the case to the Standard procedure.
- c. If no objection is asserted, the District Judge will proceed to consider the appropriate factors under 18 U.S.C. §3553(a), as consistent with Section 3582(c)(2), as well as public safety.
- d. The District Judge may then either enter the form order granting the full reduction and lowering the sentence to the bottom of the new guideline range or refer the case to the Standard procedure.
- e. Counsel is not appointed under the Expedited procedure.
- f. A District Judge may refer any case to the Standard procedure at any point during Expedited consideration.

#### **IV. STANDARD PROCEDURE**

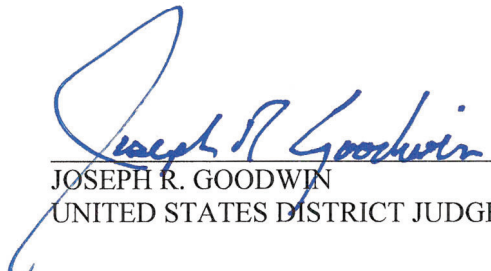
- a. If a case enters the Standard procedure, and the District Judge finds that the offender is not eligible for a reduction, the proceeding ends and the petition, if any, is dismissed.
- b. If the offender appears to be eligible, the District Judge may order the Federal Public Defender to undertake the representation of the offender or appoint counsel. The District Judge may order the parties to submit memoranda on the issues of whether a reduction should be given, and if so, how much of a reduction. The District Judge may also conduct a hearing. Offenders may appear by videoconference when it is feasible.
- c. The District Judge, after consideration of the appropriate factors under 18 U.S.C. §3553(a), as consistent with Section 3582(c)(2), as well as public safety, will either deny the petition or reduction or enter the form order granting the appropriate reduction.
- d. At any time throughout this Standard procedure, the parties may propose an agreed resolution of the case.

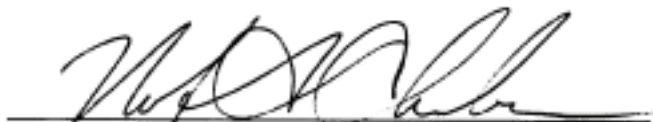
V. FORM ORDERS

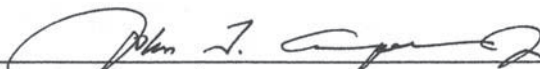
Form orders approved by the District Court are attached to this Order to simplify and streamline the handling of these cases. Additionally, form order A0-247 is available for the District Court's use.


ENTERED: October 31, 2023

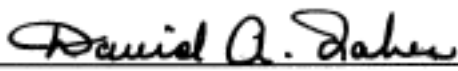
  
THOMAS E. JOHNSTON, CHIEF JUDGE

  
JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE

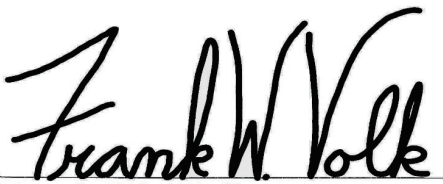
  
ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE

  
John T. Copenhaver, Jr.  
Senior United States District Judge

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA

  
David A. Faber  
Senior United States District Judge



  
Frank W. Volk  
United States District Judge

**[ORDER DESIGNATING EXPEDITED TRACK]**

[Pending before the Court is a motion, brought pursuant to 18 U.S.C. §3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline.] [Pursuant to Standing Order entered \_\_\_\_\_, xx, 2023, the Court has instituted review of sentence in this matter upon its own motion.] On November 1, 2023, a multi-part criminal history amendment designated as Amendment 821 in Appendix C to the *Guidelines Manual* became effective. Part A of the amendment addresses status points, decreasing them by one point for individuals with seven or more criminal history points and eliminating status points for those with six or fewer criminal history points. Subpart 1 of Part B creates a new §4C1.1 guideline that provides a decrease of two offense levels for "Zero-Point Offenders" (those with no criminal history points) whose offense did not involve specified aggravating factors. Parts A and B, subpart 1 of the criminal history amendment both have retroactive effect. Recognizing that the courts, probation officers, and the Bureau of Prisons would need time to process motions and prepare release plans, the Commission also decided to require that any reduction in the term of imprisonment based on retroactive application of Amendment 821 not be effective until February 1, 2024, or later. (See Amendment 825 to USSG §1B1.10, effective November 1, 2023). Accordingly, an order reducing a term of imprisonment based upon retroactive application of Amendment 821 must have an effective date of February 1, 2024, or later.

Pursuant to a Standing Order entered on \_\_\_\_\_ XX, 2023, the Court, in consultation with the United States Probation Office, has designated this Defendant for Expedited consideration.

The United States Attorney's Office is **ORDERED** to file any objection to a sentence reduction for this Defendant within seven days of entry of this Order. The Clerk is **DIRECTED**

to send a copy of this Order to Defendant [and counsel], the United States Attorney, and the United States Probation Office.

ENTER: [DATE]

**[ORDER DESIGNATING STANDARD TRACK]**

[Pending before the Court is a motion, brought pursuant to 18 U.S.C. §3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline.] [Pursuant to Standing Order entered \_\_\_\_\_, xx, 2023, the Court has instituted review of sentence in this matter upon its own motion.] On November 1, 2023, a multi-part criminal history amendment designated as Amendment 821 in Appendix C to the *Guidelines Manual* became effective. Part A of the amendment addresses status points, decreasing them by one point for individuals with seven or more criminal history points and eliminating status points for those with six or fewer criminal history points. Subpart 1 of Part B creates a new §4C1.1 guideline that provides a decrease of two offense levels for "Zero-Point Offenders" (those with no criminal history points) whose offense did not involve specified aggravating factors. Parts A and B, subpart 1 of the criminal history amendment both have retroactive effect. Recognizing that the courts, probation officers, and the Bureau of Prisons would need time to process motions and prepare release plans, the Commission also decided to require that any reduction in the term of imprisonment based on retroactive application of Amendment 821 not be effective until February 1, 2024, or later. (See Amendment 825 to USSG §1B1.10, effective November 1, 2023). Accordingly, an order reducing a term of imprisonment based upon retroactive application of Amendment 821 must have an effective date of February 1, 2024, or later.

Pursuant to a Standing Order entered on \_\_\_\_\_ xx, 2023, the court **DIRECTS** that this matter proceed under the Standard Procedure, and **DIRECTS** that the Federal Public Defender undertake the representation of Defendant or seek the appointment of counsel.

The court further **DIRECTS** that, within ten days of the entry of this Order, the United States and Defendant file written memoranda addressing all relevant issues, including eligibility, whether Defendant should receive a reduction, and, if so, the extent of any reduction.



The Clerk is **DIRECTED** to send a copy of this Order to the Federal Public Defender, Defendant [and counsel], the United States Attorney, and the United States Probation Office.

ENTER: [DATE]

## MEMORANDUM OPINION AND JUDGMENT ORDER

[Pending before the Court is a motion, brought pursuant to 18 U.S.C. §3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline.] [Pursuant to Standing Order entered \_\_\_\_\_, xx, 2023, the Court instituted review of sentence in this matter upon its own motion.] On November 1, 2023, a multi-part criminal history amendment designated as Amendment 821 in Appendix C to the *Guidelines Manual* became effective. Part A of the amendment addresses status points, decreasing them by one point for individuals with seven or more criminal history points and eliminating status points for those with six or fewer criminal history points. Subpart 1 of Part B creates a new §4C1.1 guideline that provides a decrease of two offense levels for "Zero-Point Offenders" (those with no criminal history points) whose offense did not involve specified aggravating factors. Parts A and B, subpart 1 of the criminal history amendment both have retroactive effect. Recognizing that the courts, probation officers, and the Bureau of Prisons would need time to process motions and prepare release plans, the Commission also decided to require that any reduction in the term of imprisonment based on retroactive application of Amendment 821 not be effective until February 1, 2024, or later. (See Amendment 825 to USSG §1B1.10, effective November 1, 2023). Accordingly, an order reducing a term of imprisonment based upon retroactive application of Amendment 821 must have an effective date of February 1, 2024, or later. By previous Order entered on \_\_\_\_\_ xx, 2023, this case was designated for [Expedited/Standard] consideration pursuant to this Court's Standing Order Adopting Procedures for Petitions Seeking Retroactive Application of the 2023 Criminal History Amendments.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, [plea agreement,] and addendum to the PSI from the Probation Office, [conducted a hearing on [DATE],] and

received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

[By its written and filed response, the United States does not object to the reduction ordered herein.]

[INSERT FINDINGS]

Based on the foregoing considerations, the Motion is **GRANTED**. [The Court **ORDERS** that Defendant's Criminal History Category be reduced from Category \_\_\_ to Category \_\_\_, for a new advisory guideline range of \_\_\_ months to \_\_\_ months.] [ The Court **ORDERS** that the defendant's Total Offense Level be reduced by two levels, resulting in a new Total Offense Level of \_\_\_, for a new advisory guideline range of \_\_\_ months to \_\_\_ months.] It is further **ORDERED** that Defendant's previous sentence be reduced to a period of \_\_\_\_\_ months, with credit for time served to date, effective \_\_\_\_\_. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C). Except as otherwise provided, all provisions of the judgment entered [insert previous judgment date] shall remain in effect.

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshals.

ENTER: [DATE]

EFFECTIVE: [DATE]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
[--] DIVISION**

[--],

Movant,

v.

CIVIL ACTION NO.[--]  
(Criminal Action No.[--])

UNITED STATES OF AMERICA,

Respondent.

**ORDER**

Pending is Movant's motion pursuant to 28 U.S.C. §2255. The Court **ORDERS** as follows:

- The civil action is **DISMISSED** and **STRICKEN** from the docket. The Clerk is directed to re-docket the motion in the original criminal case as one seeking relief under Section 3582(c) based upon the recent criminal history amendments. The re-characterized motion will be resolved by the undersigned within the original criminal case.
  
- The Court withdraws reference from the magistrate judge of that portion of the motion seeking relief under Section 3582(c) based upon the recent criminal history amendments. Aside from this limited withdrawal, the previously entered referral order regarding the 2255 motion shall remain in full force and effect. In order to facilitate the just and speedy resolution of the re-characterized portion of the section 2255 motion, the Clerk is directed to re-docket the motion in the original criminal case to reflect that a Section 3582(c) motion has been filed based upon the recent criminal history amendment, and the re-characterized motion will be resolved by the undersigned within the original criminal case.

The Clerk is **DIRECTED** to send a copy of this Order to counsel of record, the United States Probation Officer, the United States Attorney, and any unrepresented parties.

ENTER:        [DATE]