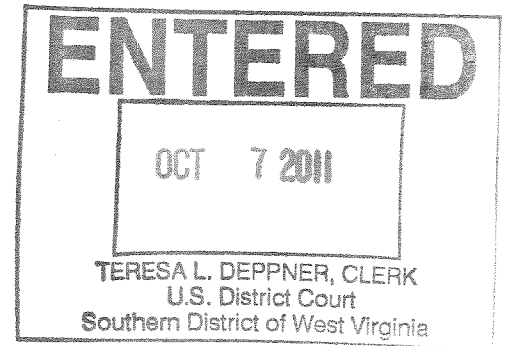


**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**RE: STANDING ORDER FOR ADOPTION
OF STANDARD PROCEDURES FOR PETITIONS
SEEKING RETROACTIVE APPLICATION OF THE
2011 CRACK COCAINE GUIDELINE REDUCTIONS**



ORDER

The Fair Sentencing Act of 2010 reduced statutory penalties for cocaine base (“crack” cocaine) offenses, eliminated the mandatory minimum sentence for simple possession of crack cocaine, and directed the United States Sentencing Commission to review and amend the United States Sentencing Guidelines to account for specified aggravating and mitigating circumstances in certain drug cases. Consistent with the Act, the Commission promulgated temporary, emergency amendments to the Guidelines that took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. This retroactivity produces the opportunity for offenders to file petitions under 18 U.S.C. § 3582(c)(2) seeking sentence reductions. Further, sentences may be reduced based upon these amendments on the motion of the court.

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 crack reduction 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. TIME FRAMES

- a. These procedures will be initially utilized for the offenders whose release would occur, if they were to receive the full benefits of the amendments, between November 1, 2011, and December 31, 2011. Thereafter, groups of offenders will be considered as follows:

<u>Release Date If Full Relief</u>	<u>Procedure to Begin No Later Than</u>
January 1, 2012 - December 31, 2012	December 15, 2011
January 1, 2013 - December 31, 2013	October 15, 2012
Future calendar years	July 1 of the previous year

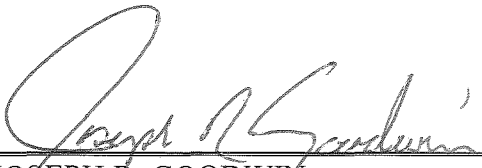
The procedure begins when the Chief Judge forwards the lists of potentially eligible offenders to the other members of the District Court.

b. With regard to petitions that may be filed in advance of these time frames, individual District Judges may choose to proceed in advance of the time frames, utilizing the other procedures set forth herein.

VI. 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.

ENTER:



 JOSEPH R. GOODWIN
 Chief Judge, United States District Court



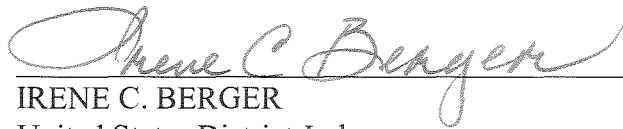
 JOHN T. COPENHAVER, JR.
 United States District Judge



ROBERT C. CHAMBERS
United States District Judge



THOMAS E. JOHNSTON
United States District Judge



IRENE C. BERGER
United States District Judge



DAVID A. FABER
Senior United States District Judge

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. On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on _____ XX, 2011, 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

On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on _____ xx, 2011, 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. On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on _____ xx, 2011, this case was designated for [Expedited/Standard] consideration.

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 base offense level be reduced by ___ levels, resulting in a new total offense level of _____. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of ___ months, with credit for time served to date. This Order is subject to the prohibition contained within

U.S.S.G. §1B1.10(b)(2)(C).

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]

**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 amendment reducing penalties for cocaine-base offenses. 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 amendment reducing penalties for cocaine-base offenses. 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 based upon the recent amendment reducing penalties for cocaine-base offenses has been filed, 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]