

**SO 1.85 IN RE: RETROACTIVE APPLICATION OF NOVEMBER 1, 2007
AMENDMENT TO CRACK COCAINE OFFENSE LEVEL GUIDELINES**

ADMINISTRATIVE ORDER

In order to effectively process the motions and pleadings filed in this court pursuant to the Retroactive Application of November 1, 2007 Amendment to Crack Cocaine Offense Level Guidelines, the court sets up the following procedures for these matters:

Pursuant to the provisions of the Criminal Justice Act, Title 18, U.S.C. 3006A (a)(1) and (c), the Office of the Public Defender for the Western District of Louisiana is hereby appointed to represent any defendant who is presently eligible for release within the next 36 to 72 months (referred to as the "2nd Tier") to determine whether or not that defendant may qualify for a reduction of sentence, and to present any motions or pleadings relative to a reduction, in accordance with the revised base offense levels for crack cocaine, Section 2D1.1 of the United States Sentencing Guidelines. Should the Office of the Public Defender determine there is a conflict with regard to the representation of a particular defendant in "Tier 2" cases, a Criminal Justice Act Panel Attorney will be appointed as counsel.

Insofar as the previous Administrative Order signed on February 6, 2008, purports to appoint the Office fo the Public Defender in these matters, such order is revoked and set aside for any case where the proposed release date is longer than 72 months (referred to as "Tier 3"). Appointments to represent defendants in "Tier 3" shall be handled on a case by case basis.

For the purposes of appointment of counsel in the matters described above, there will be a rebuttable presumption that the defendant is indigent without necessity of filing the affidavit of indigency.

In cases filed under the provisions set forth above, the following time guidelines shall

apply:

- Time to object to the Pre Sentence Investigation (PSI) - 30 days from the filing of the

PSI!

- Time for filing a response to the Proposed Order - 90 days from the issuance of the

Proposed Order.

All motions and pleadings seeking a sentence reduction or in opposition to such a reduction shall be filed in the original criminal proceeding. In the event the sentencing judge in the original proceeding is no longer a member of the Bench of this District, the case shall be reassigned by the Chief Judge.

Effective May 21, 2008.

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA
2008 FEB 26 PM 12:24

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

SIGN _____
BY DEPUTY CLERK

GENERAL ORDER

NUMBER: 2008:02

Cocaine Base - Retroactive Amendment Procedures

Below are the procedures the U.S. District Court for the Middle District of Louisiana will employ to address the issues presented by Amendment #706 to the U.S. Sentencing Guidelines lowering the guideline range for certain categories of offenses involving cocaine base. These procedures pertain to motions or actions filed for reductions of sentence pursuant to 18 USC § 3582(c)(2) or as otherwise determined by the Court.

I. CASES IDENTIFIED

Potentially impacted cases for sentence reduction have been identified by the U.S. Sentencing Commission, Administrative Office of the U.S. Courts and by search of the presentence database of U.S. Probation, Middle Louisiana. The procedure for addressing those cases is set forth in Section II below.

II. CASES IDENTIFIED BY THE U.S. SENTENCING COMMISSION / ADMINISTRATIVE OFFICE / U.S. PROBATION DATABASE

The Court enters its own Motion to Consider Reduction of Sentence at the time this General Order is filed. Notice of Motion will be filed in the record and served on all parties. The probation office is authorized to review all cases in this district identified by the U.S. Sentencing Commission, Administrative Office of the U.S. Courts, or the Middle Louisiana U.S. Probation database, as potentially impacted by the crack cocaine amendment. The Probation Office will make one of the following recommendations:

A. If the probation office concludes the defendant does not qualify for a reduction, it will submit a report to the presiding judge indicating its recommendation. Copies will be sent to all counsel. Counsel shall have twenty (20) days from the date of disclosure to submit objections to the Court. Objections shall be submitted directly to the presiding judge with simultaneous confidential copies to all parties including the probation office. Objections shall be limited to the defendant's eligibility to be considered for a reduction of sentence under the crack cocaine amendment. All other objections will not be considered by the Court.

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B. If the probation office concludes the defendant potentially qualifies for a reduction, the probation office will issue a sentencing report to the Court and properly notice the disclosure of that report to defense counsel and the government, in compliance within the time requirements of Rule 45, Federal Rules of Criminal Procedure.

III. CASES POTENTIALLY IMPACTED BY CRACK COCAINE AMENDMENT

The Court shall have the discretion to apply the crack cocaine amendment retroactively to the sentence. Whether identified by the U.S. Sentencing Commission, Administrative Office of the U.S. Courts or by search of the presentence database of U.S. Probation, Middle Louisiana, the following applies to those cases potentially impacted by the crack cocaine sentencing guideline amendment, including those cases deemed inappropriate for the guideline reduction.

A. The Court refers the matter to the Office of the Federal Public Defender for the purpose of either accepting the appointment to represent these defendants or recommending counsel for appointment from the CJA panel members listed below or other CJA panel members.

1. Mark Upton
2. Rodney Baum
3. John McClendon
4. Stephen Moore
5. Marci Blaize
6. Thomas Damico
7. Joseph Lotwick
8. Fred Crifasi

IV. MOTIONS BY COUNSEL OR PRO SE

Cases may also be brought before the court on a pro se motion or motion of counsel. When a motion to reduce sentence is filed pro se or by counsel, the clerk's office will docket the motion and will refer the matter to the U.S. Probation and Pretrial Services Office to make a preliminary determination as to whether the case potentially qualifies for a sentencing reduction under the crack cocaine amendment. The probation office will make one of the following recommendations to the presiding judge:

A. If the probation office concludes the defendant does not qualify for a reduction, it will submit a report to the presiding judge indicating its recommendation. Copies will be sent to all counsel. Counsel shall have twenty (20) days from the date of disclosure to submit objections to the Court. Objections shall be submitted directly to the presiding judge with simultaneous confidential copies to all parties including the probation office. Objections shall be limited to the defendant's eligibility to be considered for a reduction of sentence under the crack cocaine amendment. All other objections will not be considered by the Court.

B. If the probation office concludes the defendant potentially qualifies for a reduction, the probation office will issue a sentencing report to the Court and properly notice the disclosure of that report to defense counsel and the government, in compliance within the time requirements of Rule 45, Federal Criminal Rules of Procedure.

V. SCHEDULING ORDER

For those cases identified as potentially impacted by the crack cocaine sentencing amendment, the following scheduling order is issued:

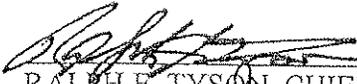
A. THE USPO SENTENCING REPORT: The date by which probation shall provide the USPO Sentencing Report will be determined by the possible release date of each defendant identified as eligible for reduction.

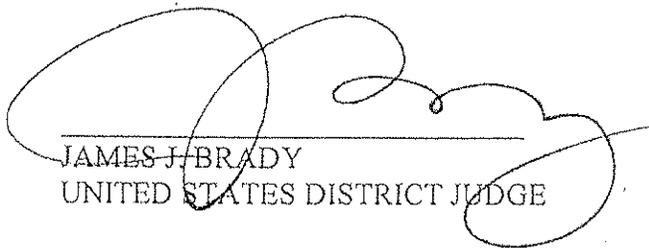
B. SENTENCING MEMORANDUM: The parties may submit sentencing memorandum in support of their position. The memorandum shall be submitted to the Court no later than one week after the date of the USPO Sentencing Report.

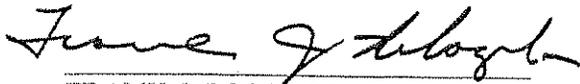
C. HEARING REQUESTS: The scheduling order would require counsel to consult regarding whether the matter can be resolved based on the pleadings submitted or whether a hearing is necessary to resolve the issue. Any counsel requesting a hearing shall indicate, in a separately headed section of their sentencing memorandum, the factual and legal basis for the hearing request and, if defendant's presence is requested, the factual and legal basis for that request. No hearings will be granted unless specifically authorized by the presiding judge in the matter.

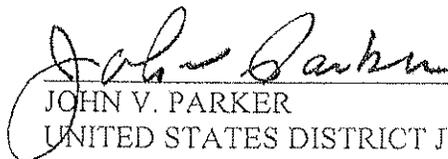
It is so ordered

Baton Rouge, Louisiana, this 26th day of February, 2008


RALPH E. TYSON, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA


JAMES J. BRADY
UNITED STATES DISTRICT JUDGE


FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE


JOHN V. PARKER
UNITED STATES DISTRICT JUDGE