

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

IN THE MATTER OF:

CASE PROCESSING)
PROTOCOL FOR MOTIONS) **General Order 2011 - 04**
UNDER 18 U.S.C. § 3582(c)(2))

CASE PROCESSING PROTOCOL FOR MOTIONS UNDER 18 U.S.C. § 3582(c)(2)
SEEKING RETROACTIVE APPLICATION OF AMENDMENTS TO SENTENCING
GUIDELINES IN CRACK COCAINE CASES

The Court hereby adopts the following case management protocol for the processing of motions under 18 U.S.C. § 3582(c)(2) seeking retroactive application of amendments to sentencing guidelines in crack cocaine cases.

1. CASES IN WHICH THE DEFENDANT HAS FILED A REQUEST (LETTER OR MOTION) FOR SENTENCE REDUCTION UNDER THE RETROACTIVE PROVISIONS OF AMENDMENT 750

In any case in which the Defendant has filed either a letter or motion requesting relief under retroactively applicable conforming amendments to the Guidelines, effective the date of this Order, the Court will issue an Order appointing the Federal Public Defender and providing the timetable for resolution. If the Federal Public Defender is unable to accept the appointment due to a current conflict, the Federal Public Defender will advise the Court and the Court will appoint Criminal Justice Act counsel. No response shall be required of the Government until the Federal Public Defender has determined whether the Defendant is eligible for a sentence reduction. If counsel for the Defendant determines that the Defendant is not eligible for a sentence reduction under the retroactive provisions of the Guidelines amendments, defense counsel shall (1) communicate that determination to the Defendant; (2) advise Probation and the United States Attorney's Office that no amended motion will be filed on behalf of the Defendant; and (3) move to withdraw as counsel for the Defendant. If counsel for the Defendant determines that the Defendant is eligible for relief, a motion or joint stipulation will follow. See Nos. 3,4 below.

2. CASES WHERE THE FEDERAL PUBLIC DEFENDER HAS IDENTIFIED A DEFENDANT WHO HAS NOT FILED A REQUEST OR MOTION, BUT WHO IS POTENTIALLY ELIGIBLE FOR A SENTENCE REDUCTION

If the Defendant has not initiated a request but has been identified and contacted by the Federal Public Defender and the Federal Public Defender has determined there is no conflict and that the Defendant may be eligible for relief, the Federal Public Defender will file either a Motion or a Joint Stipulation to initiate the litigation. The Court will appoint the Federal Public Defender *nunc pro tunc* to the date of the filing and issue either an Order on Stipulation or an Order on Motion. If the Federal Public Defender has identified such a potentially eligible Defendant but a conflict precludes representation by the Federal Public Defender, the Federal Public Defender will advise the Court and the Court will appoint Criminal Justice Act counsel and set a timetable for resolution.

3. JOINT STIPULATIONS AND WAIVERS

If the parties reach an agreement concerning a discretionary sentence reduction, a Joint Stipulation regarding the amended sentence will be filed along with a Declaration from the Defendant consenting to the entry of an amended sentence and setting forth any appropriate waivers. The Joint Stipulation will contain a certification by defense counsel that he/she has communicated with the Defendant and that the Defendant consents to the proposed resolution. The Joint Stipulation shall set forth the amended Guidelines sentencing range as calculated by the parties and any agreement to a particular sentence. No hearing shall be required in cases where the parties file such a Joint Stipulation.

4. HEARINGS

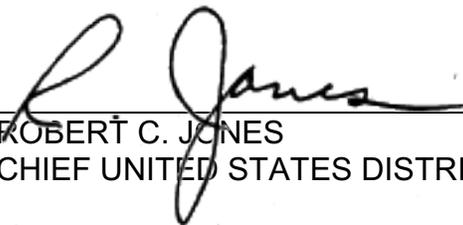
If agreement has been reached and a Joint Stipulation filed, in most cases, those documents will contain a waiver by the Defendant of presence at any hearing on the matter and, where no disputed issues exist, the Defendant will waive the hearing itself. Although many of the Joint Stipulations will contain a waiver of the Defendant's appearance at a hearing, if the Court is inclined to disagree with the sentence reduction set forth in a Joint Stipulation, the Court will permit the Defendant to participate telephonically at the hearing. In cases where the parties do not reach agreement, unless waived by the Defendant, the Defendant shall appear telephonically in any hearing that addresses the merits of the Section 3582(c)(2) motion. In appropriate circumstances, the Court may order the Defendant's physical presence.

5. BRIEFING AND SUPPLEMENTAL REPORT BY PROBATION IN CONTESTED CASES

In contested cases where a pro se request for relief has been filed, defense counsel shall file an amended Section 3582(c)(2) motion or a notice that the parties have been unable to reach a resolution. In all other contested cases, defense counsel shall file a Section 3582(c)(2) motion. Within fourteen calendar days of the filing of the Section 3582(c)(2) motion or notice, the Probation Department will provide the Court and the

parties with a supplemental report containing: (1) Probation's determination as to whether the Defendant is eligible for a sentence reduction under the retroactive amendment; (2) an amended Guidelines sentencing range calculation; (3) the original presentence investigation report; (4) a recommendation concerning whether the Defendant should receive a sentence reduction under the retroactive amendment; (5) a copy of the judgment and sentence; and (6) a copy of the Defendant's Inmate Progress Report. Within fourteen calendar days of the filing of the motion or notice, the Government shall file a response. The defense may file a reply to the Government's response within five calendar days.

Dated this 14th day of November, 2011.



ROBERT C. JONES
CHIEF UNITED STATES DISTRICT JUDGE