

# FEDERAL PUBLIC DEFENDER NORTHERN DISTRICT OF TEXAS

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On July 18, 2014, the United States Sentencing Commission voted unanimously to reduce the sentencing guideline levels applicable to most federal drug trafficking offenders. The Commission also voted to apply the reductions retroactively. These amendments became effective on November 1, 2014.

The Commission, in promulgating this guideline reduction, made the following observations:

- The effective date of the amendment will be November 1, 2014.
- Any reduced sentence cannot take effect until November 1, 2015. In other words, if you are eligible for the reduction on November 1, 2014, you will not leave prison before November 1, 2015, at the earliest.
- The maximum reduction that a defendant will be eligible for will be an offense reduction of two levels.
- Motions for reduction should be filed pursuant to 18 U.S.C. § 3582(c)(2). This statute is the most appropriate because there are no time limits for filing the motion, and the motion can be filed by you, the Bureau of Prisons, or the trial court on its own motion.
- Proceedings under 18 U.S.C. § 3582(c)(2) and § 1B1.10 of the Sentencing Guidelines do not contemplate a full re-sentencing.
- Pursuant to Rule 43(b)(4) of the Federal Rules of Criminal Procedure, the defendant need not be present in the courtroom to receive the sentencing correction.
- A hearing on the reduction is not mandatory and it is contemplated that the sentence correction can be effectuated merely on the written pleadings.
- Right to counsel at this proceeding is not mandated by the Sixth Amendment to the United States Constitution.

- An inmate is not entitled to relief if he or she was sentenced to the then mandatory minimum sentence for a drug offense. (One exception: if the government initially filed a motion for downward departure asking that the inmate be sentenced below the mandatory minimum, the inmate may be eligible for the new reduction.)
- The sentence reduction only applies to individuals who are currently in prison (therefore it does not apply to someone on supervised release).

Understand that merely because you are eligible for relief does not mean that the court must grant you relief. One of the areas that the court will be looking at is the progress you have made while imprisoned. This includes “good behavior” courses you have completed, and classes you have attended. I urge you to collect any certifications of classes completed or award certificates now. They can be useful as part of the reduction application. That said, you also may be called upon to explain any disciplinary violations that you have received while in prison.

The Fifth Circuit case law says that it is not a requirement to appoint counsel for an individual filing a Motion for Reduction of Sentence pursuant to 18 U.S.C. § 3582(c). While appointment of counsel is not a requirement, it is within the court's discretion to appoint counsel for you. Indeed, there are some judges in the Northern District of Texas who have appointed counsel for individuals seeking this relief in the past. While you may file a motion with the court and ask for the appointment of counsel to assist you in this matter, remember that the court's failure to appoint counsel will not be considered reversible error.

If you believe that you are entitled to relief under this new guideline, you are advised to seek the counsel of the attorney that represented you in either the trial court, or on appeal, if your sentence was appealed. If you have retained counsel to litigate your rights under this new guideline, you should forward this information to that retained counsel. **This letter is for informational purposes only**, and is not to be considered legal advice on the issues raised by the new guideline.

A form has been drafted by this office to solicit all the information needed to determine if you are an individual who is eligible for this sentence reduction. This form has been approved by the Chief Judge of the Northern District of Texas and it is strongly urged that you use this form in requesting relief within the Northern District of Texas. If you do not have the information requested in the form, please contact your case manager as that information is likely to be in your file. Upon your completion of the form, please send it to the District Clerk at the address of the district of your conviction. **Attaching a copy of the Judgment and Sentence (your case manager should have a copy) will expedite the review process.**

The staff attorneys of the U.S. District Court will initially screen the applications to determine your eligibility for a sentence reduction. They may request additional information which you should comply with promptly. The trial court may or may not hold a hearing on the application and may or may not require your presence at the hearing. The judges in the Northern District of Texas are committed to processing the applications quickly and fairly.

Please complete the information called for in the form and mail it to the district clerk's office in the division which your original case was filed. In other words, if your case was originally filed in Dallas then mail the completed form to the district clerk's office in Dallas. The addresses for the different district clerk's offices within the Northern District of Texas are all listed on the form motion. If you have any additional questions, you may consult the attorney that represented you on this case, or if the questions are of a general nature, I may be able to answer them for you.

Good luck to you.

Sincerely,

*/s/ Jason D. Hawkins*

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