

FILED

IN THE UNITED STATES DISTRICT COURT **NOV - 3 2014**
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

In Re: Petitions for Retroactive)
Application of Amendment 782 (“Drugs)
Minus Two”) to Sentences Previously) No. 167
Imposed for Certain Drug Offenses)

ADMINISTRATIVE ORDER

Reagan, Chief Judge:

The United States Sentencing Commission has revised the guidelines applicable to drug trafficking offenses, generally reducing by two the offense levels assigned to the drug quantities described in Sections 2D1.1 and 2D1.11. The Commission decided to make the reduction—contained in Amendment 782 to the Sentencing Guidelines—retroactive. No offender, of course, may be released unless the presiding judge reviews the case to determine whether a reduced sentence poses a risk to public safety and is otherwise appropriate.

The Amendment (informally known as “Drugs Minus Two”) became effective on November 1, 2014. To allow time for courts, probation officers, and the Bureau of Prisons to process motions and prepare release plans, **no sentence reductions based on the retroactive application of Amendment 782 will be effective until November 1, 2015 or later.**

The Commission estimates that over 46,000 offenders nationwide will be eligible to have their cases reviewed under Amendment 782. In this District alone, hundreds of offenders will be affected over the next several years; dozens will be eligible for immediate release on November 1, 2015.

To ensure efficient adjudication, and based on three anticipated postures in which motions for relief will be presented, the Court, *en banc*, orders the following:

1. Joint Motions

Representatives from the United States Attorney’s Office (“USAO”), the United States Probation & Pretrial Services Office (“Probation,”) and the Federal Public Defender’s Office (“FPD”) shall confer to identify offenders who may be eligible for sentence reduction. Where an agreement is reached as to a specific sentence, the parties shall file a joint motion indicating that agreement as soon as is practicable.

2. Contested Motions filed after FPD assessment

Where there is no agreement among the USAO, Probation, and FPD, the Court is not authorized to appoint counsel for defendants seeking relief under Amendment 782. *See U.S. v. Foster*, 706 F.3d 887 (7th Cir. 2013). However, the FPD is willing to enter its appearance on behalf of eligible defendants. This appearance is voluntary, but once the office appears on an offender’s behalf the attorney-client relationship naturally attaches.

The FPD shall file contested motions for relief as soon as practicable. When the FPD moves for a sentence reduction, the Government shall file a response within fourteen days.

3. Pro Se Motions

Upon a *pro se* defendant's motion for retroactive application of Amendment 782, the Clerk shall notify the FPD, which shall enter an appearance within seven days. Within twenty-one days of that appearance, the FPD shall either supplement the *pro se* filing or (should it feel compelled to withdraw due to a determination the petition is frivolous) move to withdraw. If the FPD files a supplement to the *pro se* motion, the Government shall respond within 14 days. If the FPD moves to withdraw, it shall send a copy of the motion to the offender at his/her last known address. (Probation is authorized to release an offender's last known address to the FPD upon request). The defendant and the Government have 30 days from the date of service to respond to a motion to withdraw.

Given the anticipated volume of joint FPD / USAO motions and the fact that no offender is eligible for release until (at earliest) November 2015, the parties shall have 45 days to focus on consensus rather than adversarial proceedings. Neither responses to contested motions nor FPD supplements to *pro se* motions shall be due until on or after December 15, 2014. Thereafter, priority will be accorded to offenders based on the release date contemplated by FPD (or joint) filings.

Should this District's FPD determine there is a prohibitive conflict, it shall enlist the FPD of the Eastern District of Missouri for representation of that defendant through the interoffice agreement it has worked out with that office. The FPD shall provide the Presentence Investigation Report or Modified Presentence Investigation Report, the Judgment, and the Statement of Reasons to any counsel who appears pursuant to that interoffice agreement.

Probation is authorized to disclose the defendants' Presentence Investigation Reports or Modified Presentence Investigation Reports, Judgments, and Statements of Reasons to the FPD (or retained counsel) and the USAO. No counsel shall further distribute any such documents unless otherwise ordered by the Court. In accordance with the policy of the Federal Bureau of Prisons, no Presentence Investigation Reports, Modified Presentence Investigation Reports, Statements of Reasons, or any document not publicly available shall be provided to any inmate.

Whether or not a defendant is represented by counsel, the presiding Judge (in consultation with Probation) will carefully review each motion to reduce sentence to determine if a reduction is in order under the law.

IT IS SO ORDERED.

Date: November 3, 2014

s/ Michael J. Reagan

Michael J. Reagan

Chief Judge

UNITED STATES DISTRICT COURT