

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

CHAMBERS OF
ROBERT W. PRATT
CHIEF JUDGE
UNITED STATES DISTRICT COURTHOUSE
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July 23, 2007

The Honorable Ricardo H. Hinojosa
Chair, United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

RE: Proposed amendments to the federal sentencing guidelines

Dear Judge Hinojosa:

The Sentencing Commission recently proposed amendments to the federal sentencing guidelines, one of which will reduce the advisory sentencing range for drug cases involving "crack" cocaine. The Commission also produced yet another detailed report regarding federal sentencing policy for cocaine offenses, again reiterating, as it has since 1995, that the 100 to 1 ratio between "crack" and powder cocaine offenses is unjust, unwarranted and has racially disparate impact, and illustrating how the disparity that results because of the 100 to 1 ratio undermines the goals of the Sentencing Reform Act. Absent the congressional disapproval that has reared its head in the past, all the amendments to the guidelines will take effect on November 1, 2007.

The Commission is currently considering whether to make the "crack" amendment to the guidelines retroactive pursuant to U.S.S.G. § 1B1.10. I urge the Commission to do so. Making the amendment retroactively applicable under U.S.S.G. § 1B1.10(c) would then permit district courts, pursuant to 18 U.S.C. § 3582(c)(2), to reduce previously imposed prison terms in "crack" cocaine cases that were based on an advisory guideline sentencing range "that has been subsequently lowered by the Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion. . . ."

Over the years, the Commission has identified twenty-four amendments to the sentencing guidelines that may be applied retroactively. On several occasions, the Commission has made retroactive reductions to the guidelines for drug offenses. For example, in November of 1993, the Commission directed the courts to not consider the carrier medium, and instead use a constructive weight of .4 milligrams per dose, when calculating the weight of LSD. In November of 1995, the Commission reduced the estimate for the weight of marijuana plants, in cases involving more than 50 plants, from 1 kilogram per plant to 100 grams per plant. In November of 2003, the Commission modified the drug equivalency table for offenses involving oxycodone. These previous amendments all resulted from issues of fairness and proportionality identified by the Commission. I respectfully submit that the issues of fairness and proportionality are even more compelling in the current context than they were in these prior revisions to the guidelines, and that retroactive application of the "crack" amendment is the best way for district courts to effectively address and correct such issues after the amendments to the guidelines take effect.

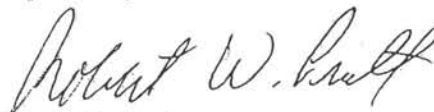
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Though some argue that making the "crack" amendment retroactive will result in an avalanche of motions, it seems clear to me that litigation is inevitable, and that the concerns regarding such litigation are exaggerated. If the "crack" amendment is not made retroactive, the courts will still be inundated with *pro se* filings under 28 U.S.C. §§ 2241 and 2255, or other procedural avenues, once the amendment takes effect. Such motions can be addressed far more efficiently if they arrive under 18 U.S.C. § 3582(c). Indeed, because motions under § 3582(c) may be resolved without a hearing and without the presence of the defendant under Federal Rule of Criminal Procedure 43(b)(4), and because the courts have already determined the drug quantity at the original sentencing, the district courts can quickly and steadily resolve filings as they arrive. Furthermore, the federal courts demonstrated post-*Booker* that the criminal justice system is capable of revisiting thousands of sentences when required to in the interest of justice. The courts' workloads should not stand in the way of achieving sentences in "crack" cocaine cases that are proportionate, fair, and serve the interests of justice.

I urge the Commission to make the "crack" amendment to the sentencing guidelines retroactive, and I appreciate the Commission considering my views as it makes this decision.

Respectfully,



Robert W. Pratt
Chief U.S. District Judge