

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

Eastern District of Kentucky
FILED
Nov - 01 2023
Robert R. Carr
Clerk, U.S. District Court

IN RE:)
)
GUIDELINES FOR MOTIONS)
SEEKING RELIEF IN CASES)
INVOLVING RETROACTIVE)
APPLICATION OF AMENDMENT 821)
TO THE FEDERAL SENTENCING)
GUIDELINES AND APPOINTMENT)
OF COUNSEL.)

GENERAL ORDER NO. 23-21

*** **

This Order addresses procedures in this District for implementing the United States Sentencing Commission’s Amendment 821 (Parts A and B, Subpart 1 Only) to the Federal Sentencing Guidelines, effective November 1, 2023 (hereafter, the “2023 Criminal History Retroactive Amendment”). The following procedures are established to review the sentences of currently incarcerated defendants that the United States Sentencing Commission (“USSC”) has identified as potentially eligible for a modification of their terms of imprisonment under the 2023 Criminal History Retroactive Amendment:

I. Defendants Identified by the USSC as Potentially Eligible for a Modification of an Imposed Term of Imprisonment

The Court will, pursuant to 18 U.S.C. § 3582(c)(2), review the list of cases of potentially eligible, and currently incarcerated, defendants provided to it by the USSC. The United States Probation Office for this District (“Probation”) shall prepare an analysis of the impact of the 2023 Criminal History Retroactive Amendment and shall recommend a modified sentence, if appropriate. Review of the cases on the list by Probation will be prioritized based

on the estimated release date, regardless of whether the defendant has filed a motion, as the Court may choose to reduce a sentence under 18 U.S.C. § 3582(c)(2) on its own.

After reviewing Probation's recommendation, the Court may enter an order that: appoints counsel (if appropriate) for the defendant; directs Probation to make its analysis available to the defendant or defense counsel and the United States; directs the United States to respond to the recommendation within 14 days; and permits the defendant or defense counsel to file a reply to the United States' response with 14 days of service of the response.

For cases in which Probation finds a defendant to be potentially eligible, but having an expected release date prior to the February 1, 2024, effective date, Probation will draft a brief memorandum and tender for the Court's consideration an AO 247 indicating that motion is denied as moot.

II. Motions for Relief Under the 2023 Criminal History Retroactive Amendment

If a *pro se* defendant submits a letter to the Court requesting relief under the 2023 Criminal History Retroactive Amendment, the Clerk shall accept the letter and file it as a motion seeking relief under the amendment. The Court will review such letters in accordance with the procedures set forth in this General Order.

A. Appointment of Counsel

Appointment of counsel is not required. However, the Court in its discretion and pursuant to the provisions of the Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A, may appoint counsel to defendants identified by the USSC as potentially eligible for relief under the 2023 Criminal History Retroactive Amendment. The Court also may appoint counsel for

defendants who are not on the list but have filed motions and have been determined to be potentially eligible for relief.

If a defendant was appointed counsel previously under the CJA, the Court may assume that the defendant is indigent, and counsel may be appointed. However, to confirm each defendant's present financial circumstances, the Clerk's Office shall forward to each defendant identified for appointment of counsel a new CJA-23 Financial Affidavit to be completed and returned to the Clerk Office and filed under seal upon receipt.

If a defendant previously was represented by retained counsel, the Clerk of the Court shall contact retained counsel to determine if he or she intends to continue representation of the defendant.

B. Review of Motions

When a defendant files a motion seeking a sentence modification under the 2023 Criminal History Retroactive Amendment, whether in a *pro se* capacity or through counsel, Probation shall, upon the assigned judge's request, prepare an analysis of the amendment's impact on the defendant's sentence. As part of its analysis, Probation shall include among other relevant information: a conclusion regarding whether the defendant meets the criteria outlined in newly added United States Sentencing Guidelines § 4C1.1, Part C, which is applicable to certain zero-point offenders; a brief memo indicating post-conviction conduct per the United States Bureau of Prisons; and a statement of whether the defendant is currently incarcerated. Probation shall recommend a modified sentence, if appropriate.

If Probation concludes, and the Court agrees, that the defendant is currently incarcerated and is eligible for a reduced sentence under the 2023 Criminal History Retroactive Amendment, the Court may enter an order that: appoints the defendant counsel (if appropriate);

directs Probation to make its report available to the defendant or defense counsel; directs the United States to respond to the defendant's motion within 14 days; and permits the defendant or defense counsel to file a reply to the United States' response with 14 days of service of the response.

If Probation concludes, and the Court agrees, that the defendant is not currently incarcerated or is not eligible for a reduced sentence under the 2023 Criminal History Retroactive Amendment, the Court may enter an order that directs the United States to file a response to the defendant's motion within 14 days, and permits the defendant (whether represented by counsel or proceeding *pro se*) to file a reply to the United States response within 14 days of service of the response.

Dated: November 1, 2023.



A handwritten signature in black ink, appearing to read "Danny C. Reeves".

Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky