

Mar - 28 2019

Robert R. Carr  
Clerk, U.S. District CourtUNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

## GENERAL ORDER 2019-5

IN RE: APPOINTMENT OF COUNSEL AND MOTIONS FOR RELIEF  
UNDER THE FIRST STEP ACT OF 2018

The Court has established procedures to review the sentences of currently-incarcerated individuals that the United States Sentencing Commission (“USSC”) has identified as potentially eligible for a modification of their term of imprisonment in accordance with Section 404 of the First Step Act.

## 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)(1)(B), review the list of cases of potentially eligible, and currently incarcerated, defendants provided to it by the USSC. The United States Probation Office (“Probation”) shall prepare an analysis of the First Step Act’s impact and shall recommend a modified sentence, if appropriate. 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 file a response to the recommendation within 14 days; and permits the defendant or defense counsel to file a reply to the United States’ response within 14 days of service of the response.

## II. Motions for Relief Under Section 404 of the First Step Act

If a *pro se* defendant submits a letter to the Court requesting relief under the First Step Act, the Clerk shall accept the letter and file it as a motion for relief under Section 404 of the First Step Act. The Court shall review such letters in accordance with the procedures set forth herein.

## 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 First Step Act. The Court also may appoint counsel for defendants who are not on the list, but have filed a motion and have been determined to be potentially eligible for relief.

If a defendant was appointed counsel previously under the CJA, the Court will assume that the defendant is indigent and counsel may be appointed. 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 First Step Act, whether in a *pro se* capacity or through counsel, Probation shall, upon the assigned judge's request, prepare an analysis of the First Step Act's impact on the defendant's sentence. As part of its analysis, Probation shall include a conclusion regarding whether the defendant was sentenced for a "covered offense" as provided in Section 404 of the First Step Act and whether the defendant is currently incarcerated. Probation shall recommend a modified sentence, if appropriate.

If Probation concludes, and the Court agrees, that the defendant was sentenced for a "covered offense" and is currently incarcerated, 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 file a response to the defendant's motion within 14 days; and permits the defendant or defense counsel to file a reply to the United States' response within 14 days of service of the response.

If Probation concludes, and the Court agrees, that the defendant was not sentenced for a "covered offense" or is not currently incarcerated, 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 March 28, 2019.**



A handwritten signature in black ink that reads "Karen K. Caldwell". The signature is written in a cursive, flowing style.

KAREN K. CALDWELL, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY

## **TEXT ORDERS**

### **A. For cases in which the Court appoints counsel:**

Pursuant to General Order No. 2019-5 this Court has established procedures to review the sentences of currently incarcerated individuals who may be eligible for a sentence modification under Section 404 of the First Step Act pursuant to 18 U.S.C. § 3582(c)(1)(B).

In accordance with the Court's procedures, it is hereby

**ORDERED** as follows:

(1) having determined that the defendant is financially unable to secure the services of an attorney and also having found that appointment of counsel is appropriate in this case, [enter CJA attorney's name] is appointed to represent the defendant pursuant to 18 U.S.C. § 3006A(b);

(2) the United States Probation Office shall provide a copy of its Memorandum of Recalculation to the United States Attorney and the defendant's counsel;

(3) the United States shall file a response within 14 days; and

(4) the defendant's counsel may file a reply within 14 days of the filing of the United States' response.

### **B. For defendants who are represented by retained counsel and in cases where the Court concludes that appointed counsel is not necessary:**

Pursuant to General Order No. 2019-5, this Court has established procedures to review the sentences of currently incarcerated individuals who may be eligible for a sentence modification under Section 404 of the First Step Act pursuant to 18 U.S.C. § 3582(c)(1)(B).

In accordance with the Court's procedures, it is hereby

**ORDERED** as follows:

(1) the United States Probation Office is directed to provide a copy of its Memorandum of Recalculation to the United States Attorney and to either: (i) the defendant if counsel is not appointed or (ii) defendant's counsel;

(2) the United States shall file a response within 14 days; and

(3) the defendant or the defendant's counsel may file a reply within 14 days of the filing of United States' response.

**C. For cases not on the USSC list, which Probation and the Court agree that the defendant is not eligible for a sentence modification:**

Defendant [insert defendant's name] has filed a motion under 18 U.S.C. § 3582(c)(1)(B) seeking a modification of sentence under the First Step Act. It is hereby

**ORDERED** as follows:

(1) The United States shall file a response to the defendant's motion within 14 days;  
and

(2) the defendant may file a reply within 14 days of the filing of the United States' response.