

**FILED**

**MAR 18 2015**

Clerk, U.S. District Court  
District Of Montana  
Missoula

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

In Re: Appointment of Counsel to  
Defendants Seeking Sentence  
Reduction Under Amendment 782.

STANDING ORDER No. DLC-21A

Effective November 1, 2014, the United States Sentencing Commission has reduced the base offense levels applicable to most drug offenses under the United States Sentencing Guidelines. The reduction applies retroactively. *See* U.S.S.G. App. C Supp. Amendments 782, 788 (Nov. 1, 2014). Consequently, defendants currently serving prison terms for federal drug crimes may be entitled to a sentence reduction under 18 U.S.C. § 3582(c)(2).

Congress's purpose in enacting Amendment 782 is to allow sentencing courts to eliminate measures of harshness in drug sentences that empirical evidence has shown to be unnecessary to encourage defendants to plead guilty or to protect public safety. Both before and after the reduction, the applicable guidelines continue to support judges' meaningful distinctions among defendants while minimizing unwarranted disparities among similarly situated defendants. In addition, Amendment 782 will ameliorate significant overcapacity and costs in federal prisons as defendants transition out of prison to supervised release earlier than they otherwise would. *See* U.S.S.G. Supp. to App. C Amendment 782

“Reasons for Amendment” (Nov. 1, 2014), *available at* <http://www.ussc.gov/guidelines-manual/2014-ussc-guidelines-manual>.

For many defendants, the reduction will likely result in earlier release from confinement. But some defendants who may be eligible for a reduced sentence may not be capable of filing *pro se* or may find the attempt to file difficult. These defendants may file their motions too late to benefit – or not at all. To the extent that eligible defendants are not heard because they are unable to obtain professional assistance in filing, the core purpose of the Amendment is frustrated by the defendant’s indigency. Conversely, defendants who are capable of filing *pro se* may not understand the requirements for eligibility and so may impede the Court’s efforts to address the motions of the large number of defendants who are eligible.

Consequently, the Judges of the District of Montana find that the interests of fairness and judicial efficiency, as well as the purpose of Amendment 782, will be materially advanced by the appointment of counsel to represent indigent defendants who are potentially eligible for a sentence reduction under the Amendment. 18 U.S.C. § 3006A(a)(1)(I), (a)(2).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Provided the defendant was represented at sentencing by counsel appointed under the Criminal Justice Act, counsel will be appointed to represent

each defendant identified by the Sentencing Commission as potentially eligible for a sentence reduction under Amendment 782, *see* Attachment A, and each currently incarcerated defendant who files a *pro se* motion for sentence reduction under Amendment 782 and who was convicted of a drug crime in this Court.

2. The attorney who represented a qualified defendant at the time of sentencing shall promptly determine whether any conflict arising after sentencing precludes representing the defendant with respect to a potential sentence reduction under 18 U.S.C. § 3582(c)(2) and Amendment 782. If a conflict exists, or if sentencing counsel is no longer available, counsel shall contact the Federal Defenders of Montana, who shall locate new, conflict-free counsel to represent the defendant.

3. When conflict-free counsel has been located, that person shall file a Notice of Appearance. Counsel's appointment under the Criminal Justice Act and under the terms of this Order will commence on that date. The scope of counsel's appointment under the terms of this Order is limited to a motion under 18 U.S.C. § 3582(c). The case compensation maximum is \$2,100 at a rate of \$126.00 per hour. CJA Guidelines §§ 230.16(a), -23.20(i). The Clerk shall ensure the Judgment, the Presentence Report, any plea agreement, and any motion(s) under U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35(b) are filed in the electronic docket and shall provide access to counsel for the United States and counsel for the Defendant.

4. Counsel shall review the file and contact the defendant regarding the defendant's eligibility for relief under Amendment 782 and counsel's availability to act for the defendant. If authorized by the defendant, counsel shall represent the defendant in any proceeding under Amendment 782.

5. The parties are not to rely upon Local Rule CR 49.1(a)(2)(E) to file motions or briefs under seal unless the document in question contains details of the assistance provided by the defendant. Mere reference to a motion under U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35(b), or a reduction in sentence resulting from such a motion, is insufficient to warrant sealing of any document without leave of court.

6. If counsel and the defendant choose not to file a motion under the Amendment, counsel shall file a notice to that effect. If a defendant chooses to proceed *pro se*, counsel shall file a notice to that effect and shall also certify that the defendant has been advised other counsel will not be appointed. Counsel's appointment shall terminate on filing of either notice. Otherwise, counsel's appointment shall continue through disposition of the motion and, if taken, any appeal.

7. The Federal Defenders of Montana are authorized to contact listed defendants who were not represented by appointed counsel at sentencing to advise them of the potential availability of counsel under the terms of this Order on a proper showing of indigency in a motion to the Court. Defendants who wish to

have counsel appointed to represent them must complete a financial affidavit (Form CJA-23) and must request appointment of counsel.

8. To conserve the resources of the Probation Office, the Court will review each motion filed to determine whether the defendant is clearly ineligible for a reduction. This review is intended only to screen out those defendants who are clearly ineligible for the reduction. Review will be completed within 21 days or less.

9. When review is completed, the Probation Office will be notified, and a “Remark” will be made in the docket. Proceedings on the motion will follow this schedule:

- a. Upon receipt of notice, the Probation Office will have 30 days to complete a draft addendum to the Presentence Report, including a new calculation of the guideline range and the information described in U.S.S.G. § 1B1.10 Application Note 1(B).
- b. When it is completed, the draft addendum will be shared with the parties, who will have 14 days to attempt to resolve any objections.
- c. The final presentence report addendum will be completed within 14 additional days.
- d. Within seven days of receipt of the final presentence report addendum, the parties shall file briefs stating their positions as to the defendant’s eligibility for the reduction; whether a reduction should be made; and, if so, the extent of the reduction.
- e. Unless the presiding judge sets a hearing, the matter will be decided on the briefs.

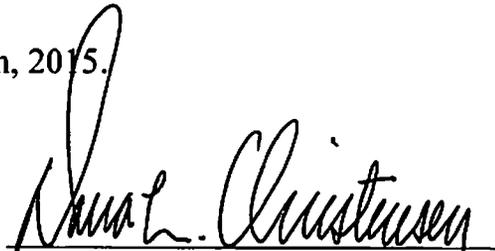
10. The presiding judge may rule on the motion at any time. The parties may

at any time submit a joint stipulation that a sentence reduction is appropriate and that a reduction should be made to an agreed sentence.

11. The Clerk's Office and the Federal Defenders of Montana shall take all necessary measures to implement this Order.

12. This Order is effective upon filing and applies to pending motions under 18 U.S.C. § 3582(c)(2) and Amendment 782. It supersedes paragraph 3 of Standing Order DLC-20.

DATED this 18<sup>th</sup> day of March, 2015.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, Chief Judge  
United States District Court