

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

vs.

CASE NO. 8:97-CR-213-T-17TBM

HANDY BAILEY
_____ /

ORDER

The United States Sentencing Commission has promulgated Amendment 706 lowering the base offense level for cocaine base (crack cocaine) offenses by two levels for eligible defendants sentenced on or after November 1, 2007. The Commission later decided this Amendment should be applied retroactively to defendants sentenced before November 1, 2007. The Defendant in this case, having been sentenced prior to November 1, 2007, has filed a motion pro se alleging his/her eligibility for a reduction in his/her base offense level. A preliminary review of the motion reflects that it may have merit. Accordingly, the Court, pursuant to 18 U.S.C. Sec 3582(c)(2), issues the following directives:

1) The Office of the Federal Public Defender is appointed to represent Defendant for the purpose of seeking a reduction of Defendant's original sentence and shall file a notice of appearance, a notice of conflict, or a notice that Defendant is not eligible for the services of the Public Defender within seven (7) days of this order. If a notice of conflict is filed, the Court may appoint CJA counsel to represent Defendant. This appointment of counsel does not deprive Defendant of the right to retain private counsel should he/she have the financial resources to do so.

2) The United States Attorneys Office shall cause a notice of appearance to be entered on behalf of the Government within seven (7) days of this order.

3) The United States Probation Office shall provide this Court, Defendant's counsel, and Government counsel a supplemental presentence report within forty-five (45) days of this order, subject to an extension of time upon request by the Probation Office. The supplemental report shall address the issues of whether Defendant is eligible for a reduction of his/her sentence and, if so, whether defendant is suitable for such a sentence reduction pursuant to the provisions of the Amendment and U.S.S.G. Sec 1B1.10, which becomes effective on March 3, 2008. If the Probation Office determines that Defendant is eligible for a reduction of sentence, the supplemental report shall specifically include the following: (a) whether Defendant is eligible for a sentence reduction and, if so; (b) a proposed calculation of the new guideline range or the percentage below the guideline range as appropriate; (c) a report on the institutional adjustment of Defendant; (d) a report on the danger of Defendant to the public; (e) a report on the post-release plans of Defendant; and (f) Defendant's place of incarceration and whether that facility has video conferencing capability.

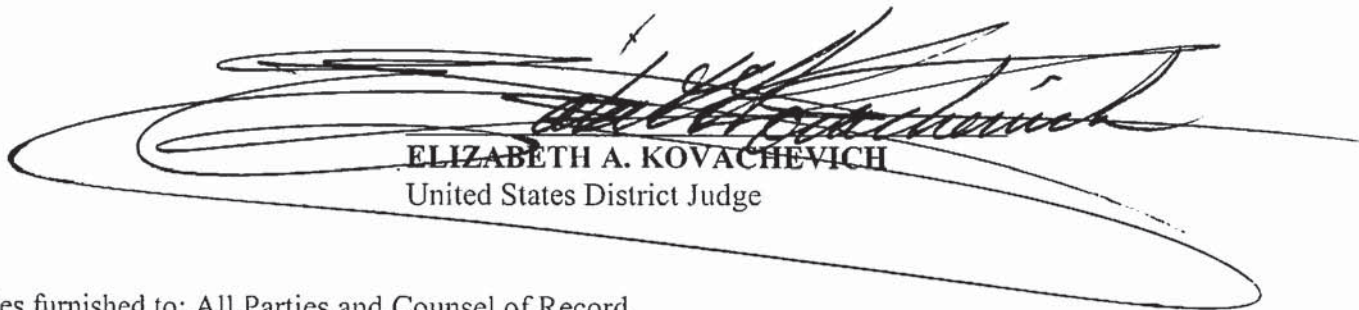
4) Defendant's counsel and the Government shall file a response to the Probation Office's supplemental report within twenty-one (21) days of receipt of the supplemental report. Prior to filing their responses, counsel shall confer personally in a good faith effort to resolve any disputes with regard to Defendant's eligibility and suitability for a sentence reduction and shall include in their responses the issues upon which they agree or disagree. In the event counsel agree on the appropriate disposition of the matter, they shall file a stipulation to that effect.

5) Upon receipt of the Probation Office's supplemental report and counsels' responses or joint stipulation, the Court will either issue an order based on the supplemental report and responses or joint stipulation or convene a hearing.

6) In the event the Court rejects counsels' joint stipulation as to the appropriate disposition of the matter, the Court will enter an order advising counsel of that fact and will allow counsel an additional period of time to supplement their responses before deciding the merits of the motion either on the written submissions or by way of a hearing.

7) The Clerk's office is directed to furnish a copy of this order to the Office of the Federal Public Defender, the United States Attorneys Office, the United States Probation Office, and the Defendant at his/her address of: Inmate 21856-018, Handy Bailey, Coleman Medium, FCI, P.O. Box 1032, Coleman, FL 33521.

DONE AND ORDERED in Chambers in Tampa, Florida, this 26th day of February, 2008.



ELIZABETH A. KOVACHEVICH
United States District Judge

Copies furnished to: All Parties and Counsel of Record