

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

IN RE: PETITIONS FOR REDUCTION OF
SENTENCES BASED UPON
RETROACTIVE APPLICATION OF
AMENDMENT 821

General Order No. 2023-32

GENERAL ORDER

WHEREAS, on April 27, 2023, the United States Sentencing Commission voted to (1) create a new §4C1.1 guideline that provides a decrease of two offense levels for offenders who did not receive any criminal history points under Chapter Four and whose instant offense did not involve specified aggravating factors; and (2) limit the overall impact of “status points” on certain offenders’ criminal history by amending §4A1.1. (Amendment 821); and

WHEREAS, absent Congressional action, the criminal history amendments reflected in Amendment 821 will become effective on November 1, 2023; and

WHEREAS, on August 24, 2023, the Sentencing Commission voted to give retroactive effect to Amendment 821. However, in order to give the courts, probation officers and the Bureau of Prisons time to process the motions and prepare release plans for individuals affected by the Amendment, the Commission delayed the effective date of retroactivity to February 1, 2024. As a result, individuals cannot be released from custody pursuant to the retroactive application of the amendment before February 1, 2024; and

WHEREAS, although the effective date of retroactivity is February 1, 2024, beginning November 1, 2023, courts will be authorized to conduct sentence reduction proceedings and enter orders pursuant to 18 U.S.C. §3582(c)(2) based upon the retroactive application of Amendment 821, provided that any order reducing the term of imprisonment has an effective date of February 1, 2024, or later; and

WHEREAS, it is in the interest of judicial economy that consistent procedures be followed in the handling of requests seeking a reconsideration of a sentence pursuant to Amendment 821; therefore

It is hereby ordered that the procedures listed below will apply to any request filed in the Northern District of Indiana seeking a sentence reduction based upon the retroactive application of Amendment 821.

1. It is ordered that, absent a conflict of interest, the Federal Community Defender Program for the Northern District of Indiana (FCD) is appointed generally for all cases arising in this district under 18 U.S.C. Section §3582 where the defendant desires appointment of counsel and financially qualifies for such appointment.

Such appointment will not prevent counsel from later seeking to withdraw from the representation.

2. It is hereby ordered that the Indiana Northern District's Probation and Pretrial Services, United States Attorney's Office (Probation Office) and the FCD (or privately retained attorney) shall be permitted to disclose to each other any documents necessary for resolution of any motion made or to be made pursuant to 18 U.S.C. §3582 to any attorney of record in connection with the Section 3582 litigation. Such documents may include 1) pre-sentence investigation reports; 2) addenda; 3) judgments; 4) statements of reasons; and 5) Bureau of Prison records. All other restrictions that normally apply to dissemination of any of these types of records remain in effect.
3. Within thirty (30) days of a request for reconsideration of a sentence pursuant to Amendment 821 filed by the FCD (or privately retained counsel), the Probation Office shall prepare and file an addendum to the presentence investigation report identifying the applicable guideline calculations at the time of sentencing, the guideline calculations after applying Amendment 821, and any information the Probation Office deems relevant regarding the Defendant's conduct while serving a term of imprisonment.
4. Within fourteen (14) days of the date the addendum addressing the application of Amendment 821 is filed, representatives from the United States Attorney's Office for the Northern District of Indiana and the FCD (or privately retained counsel) shall confer to determine if the parties can reach an agreement as to a specific sentence, and the parties shall file a statement with the Court indicating the agreement of the parties or notifying the Court the parties could not reach an agreement. After being notified the parties have reached an agreement, the court will take action it deems appropriate. In cases in which there is no agreement, within fourteen (14) days of notifying the Court that the parties could not reach an agreement, each party may file any document the party deems appropriate for the Court's consideration in evaluating a request for reconsideration of the sentence. The court will then take appropriate action, depending on the nature of the documents and the remedy sought.
5. In each case/motion filed pro se that raises a request for reduction under Amendment 821, the Court will conduct an initial review of the Motion within thirty (30) days and will determine if the FCD should be appointed. In the event the FCD is appointed, the parties are directed to follow the steps set forth in paragraphs 2-4 above.
6. Any agreed motions for sentence reduction shall include the defendant's current term of imprisonment and projected release date, the total offense level, criminal history category, guideline range applicable to the defendant at the time of sentencing, and the total offense level and guideline range applicable to the defendant as a result of Amendment 821.

7. The Clerk of Court is directed to send copies of this order to the Indiana Northern District's FCD and United States Attorney and to post this order to the Court's website.
8. In accordance with this Order, the Clerk of Court is directed to notify the FCD of any motions seeking relief pursuant to Amendment 821. The Clerk's office is directed to use new or modified events and statistical codes as needed to facilitate the reporting of the activity (motions, orders, and amended judgments without the updating of original disposition/sentencing dates) related to the sentencing guideline amendment, so as to ensure said filings and decisions are properly reported.

ENTERED: October 20, 2023

/s/ Holly A. Brady
Holly A. Brady, Chief Judge

/s/ William C. Lee
William C. Lee, Judge

/s/ James T. Moody
James T. Moody, Judge

/s/ Philip P. Simon
Philip P. Simon, Judge

/s/ Theresa L. Springmann
Theresa L. Springmann, Judge

/s/ Joseph S. Van Bokkelen
Joseph S. Van Bokkelen, Judge

/s/ Jon E. DeGuilio
Jon E. DeGuilio, Judge

/s/ Damon R. Leichty
Damon R. Leichty, Judge