

June 22, 2011

Hon. Patti B. Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Retroactivity of Crack Cocaine Guideline Amendment

Dear Judge Saris,

The Commission faces an important decision on whether and how to make the reductions adopted pursuant to the Fair Sentencing Act for crack cocaine sentences retroactive. As you know, I am very familiar with this process because while serving on the Commission it had to decide if and how sentencing guideline reductions should be made retroactive.

In 1993, the Commission acknowledged that the manner in which LSD was weighed for sentencing purposes was wrong. At the time, one dose of LSD on a sugar cube could result in a higher sentence than 100 doses of LSD on light-weight blotter paper. That made no sense. The Commission corrected the disparity by assigning each dosage of LSD a standard weight. It then had to decide whether to make that change apply to those already in prison for LSD offenses. It wasn't a tough decision. If the law was unfair going forward, it was unfair for those already sentenced under it.

The same can be said for crack cocaine sentences today. I urge the Commission to approve retroactivity for eligible inmates sentenced under the old rules and do so without conditions or exclusions.

The Commission deserves much of the credit for keeping crack cocaine reform alive during the past 15 years. The Commission held hearings, took evidence and published three reports on crack cocaine during that time. Its tireless efforts provided the data, research and evidence that convinced Congress to pass of the Fair Sentencing Act last year that reduced crack penalties. Thanks to the Commission, it is widely agreed that the 100:1 crack-powder disparity was unwarranted.

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With regard to crack cocaine, if Congress was right to correct its mistake – and I believe that it was – it makes little sense to deny relief to those who were sentenced under the old rules.

New research by the Commission shows that recidivism rates for those who were released early due to the 2007 vote are slightly *lower* than for similar prisoners who would have been eligible but who had already been released after serving their full terms. And, of course, not all of those who qualify for a sentence reduction will get it. As you know, each defendant must petition a federal judge requesting a sentence reduction. Rules require judges to consider the impact on public safety of the prisoner's earlier return to the community. Prosecutors can raise objections, including concerns about how an individual's release might be detrimental to public safety.

I would caution the Commission against taking the route advised by the Department of Justice. It laudably supports the concept of retroactivity, but would deny it to over half of otherwise eligible inmates if a gun was present or they have high criminal history points. The Commission has never attempted to split the baby in this fashion and it should not do so now. In the past it always and correctly trusted federal judges to handle sentence reduction decisions responsibly.

Thank you for considering my views.

Very truly yours,


William W. Wilkins

WWW/bmj