



UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

ONE EXCHANGE TERRACE  
PROVIDENCE, RI 02903

John J. McConnell, Jr.  
UNITED STATES DISTRICT JUDGE

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July 7, 2014

The Honorable 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 the drug guidelines amendment

Dear Judge Saris:

I write to urge the Sentencing Commission to make the lower guideline ranges for drug offenses that will go into effect on November 1, 2014 retroactive and to do so without conditions or exclusions that would limit existing prisoner's eligibility.

My experience is similar to the findings of the Commission -- the Guidelines place too much emphasis on the role of drug quantity in determining recommended sentence lengths. I commend the Commission's work in addressing this issue and implementing the needed reduction. I write now to urge (1) that the Commission make this offense level reduction retroactive and (2) that the Commission not limit the eligibility for the reduction as recently proposed by the Department of Justice.

First, as to retroactivity, it is axiomatic that the date on which the Court sentenced a person should not dictate the appropriateness of their punishment. Judges should determine whether someone would benefit from the Commission's recognition that lower drug guidelines would better serve the goals of punishment. We do this work every time we sentence someone. As judges, the individual factors we take into account every time we sentence someone should be the factors considered as to whether someone gets the benefit of the reduced guideline range -- not the arbitrary date of their sentencing.

The reasons the Commission cites for lowering sentences going forward apply with even greater force looking backward. Lowering our starting point for the future without correcting the excesses of the past is simply unfair.

Moreover, retroactivity will serve the interest of public safety by reducing the number of people in federal prison, allowing more funding to go to the Justice Department to prevent, fight, and prosecute crime.

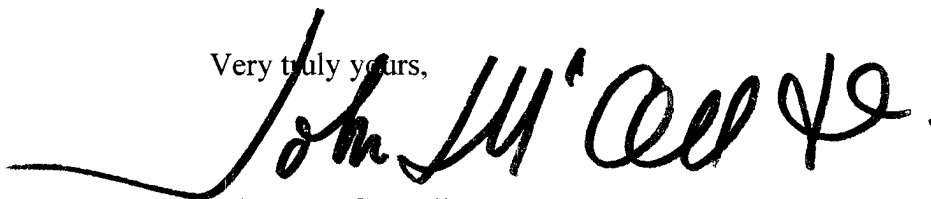
I am aware of the resource and court administration concerns posed by retroactivity. However, judges will dutifully engage in a collaborative effort with Probation Officers, U.S. Attorneys, and the Federal Public Defenders to address this issue. We learned a great deal from the work to make retroactivity of the crack cocaine reductions. We expect that same collaboration will take place in this effort with equally positive results. We are ready, able, and willing to do the appropriate work of retroactivity.

Second, as to the proposed exclusions from retroactivity, the commitment to individualized consideration that we bring to every sentencing weighs decisively against categorical exclusions. I understand the challenge of balancing individualized justice and the protection of the public. We take it on every time we sentence. To the extent that exclusions, such as those proposed by the Department of Justice, are intended as public safety proxies, they are poor ones. The proposed carve outs -- for those whose sentences were enhanced for weapon possession or 18 U.S.C. § 924(c) conviction, threat or use of violence, aggravating role, and obstruction of justice and for anyone in Criminal History Categories III through VI -- will operate like mandatory minimums. They will cull otherwise deserving prisoners for no sound reason. As judges, we are well equipped to sort out those who deserve early release from those who would pose a risk if released early. It is our job. Moreover, I am reassured to know that prisoners who benefitted from retroactivity of the crack cocaine amendment did not reoffend at a different rate than their full term counterparts.

Even though retroactivity and individualized assessment for all eligible persons is time-intensive and administratively burdensome, it is the right thing to do so that we can again ensure that our justice system is fair to all concerned. As Judge Irene Keely of the Judicial Council's Criminal Law Committee so aptly put it, fundamental fairness is what is at stake here. Trust judges to take on the hard tasks and make appropriate individualized assessments to bring about the ends of justice.

Thank you for your excellent work in this vitally important area of justice.

Very truly yours,

A handwritten signature in black ink, reading "John J. McConnell, Jr." with a stylized flourish at the end.

John J. McConnell, Jr.  
U.S. District Court Judge  
District of Rhode Island