

United States District Court

EASTERN DISTRICT OF VIRGINIA
401 COURTHOUSE SQUARE
ALEXANDRIA, VIRGINIA 22314-5799

CHAMBERS OF
GERALD BRUCE LEE

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July 3, 2014

Honorable Patti Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, DC 20002-8002
Attention: Public Affairs – Retroactive Public Comment

Re: Letter in Support of Retroactive Application of
the “Drugs Minus Two Amendment” to the Drug
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Dear Judge Saris and Commissioners:

I am writing to express my support for applying the “drugs minus two amendment” to prisoners who are currently serving their sentences. I fully support the retroactive application of the amendment because: (1) it helps mitigate the disparate impact of federal sentences on minority groups, (2) it is just and fair, and (3) the courts are capable of handling the administrative burdens that may arise in processing the cases.

I commend the U. S. Sentencing Commission’s unanimous vote to lower the federal drug sentencing guidelines by two levels and thereby passing the “drugs minus two amendment.” This is a very significant step toward improving federal sentencing for drug offenses. The Commission’s work on this critical matter is not finished. I understand that the Commission is considering whether to make the two-level reduction to the drug table retroactive and will be holding a vote to decide this issue on July 18, 2014.

This amendment is an important step toward lessening the harmful impact of mass incarceration on racial and ethnic minorities, particularly in the African-American and Hispanic communities. African-American and Hispanic families have disproportionately borne the brunt of lengthy prison sentences under the Sentencing Guidelines for crack cocaine and other drug statutes. My heart does not bleed for drug dealers or drug traffickers. That said, I do think the sentences previously within Guidelines range in drug cases were overly long, and in some instances were disproportionate for those offenders addicted to drugs who had not previously

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received drug treatment. As you, Judge Saris, aptly noted, these lengthy prison sentences damage “the economy and morale of communities and families as well as the respect of some for the criminal justice system.”¹ About three quarters or 75% of the defendants who would benefit from the retroactive application of the “drugs minus two amendment” are people of color. Thus, this amendment is a step in the right direction and represents modest relief from the damaging impact of sentencing disparities in these communities.

As a matter of fairness, the Committee should vote to apply the “drugs minus two amendment” retroactively. It is only just and fair that if it has been determined that the drug penalties are too harsh for defendants that will be sentenced in the future, defendants who are currently serving sentences under the higher drug table should be sentenced in the same way. Equity requires that people who are similarly situated be treated in the same manner. Thus, a defendant who was sentenced in 2013 for a drug offence should receive the same sentence as a defendant who committed the same drug offense in 2015.

As a judge who sits in the Eastern District of Virginia, I appreciate that the retroactive application of the “drug minus two amendment” will have a significant impact on my district’s caseload. As such, I appreciate the concerns the Commission has about the substantial number of defendants that will qualify for the retroactive application of the amendment and the potential administrative burden on the courts, the probation officers and all stakeholders in the federal sentencing system. As much as I agree that these are valid concerns, I do not agree to delaying justice.

I am confident that the courts are capable of handling the administrative burdens that may arise in processing the new cases because we have done it before. The Eastern District of Virginia has significant experience in dealing with the retroactive application of the crack cocaine sentencing amendments. During the first retroactive application of the crack cocaine amendments reducing guideline ranges there was some concern that the Court, the U.S. Attorney’s Office, the Federal Public Defender and the U.S. Probation Office would be overwhelmed. However, in the Eastern District of Virginia, the United States Attorney, the Public Defender, and the U.S. Probation Office worked collaboratively and efficiently to process the cases and reduced sentences of more than 1,500 defendants. This time around, the Eastern District of Virginia can expect to process approximately 1,228 defendants.

The average “drugs minus two amendment” reduction for eligible defendants is 23 months. Almost 25% of the eligible defendants are non-citizens of the United States and thus will be deported upon release. The deportation of non-citizens will reduce the supervision caseload in the district as there will be no need for processing by the U.S. Probation Office. In the Eastern District of Virginia, approximately 106 defendants would become eligible for

¹ Chief Judge Patti B. Saris, Chair, U.S. Sentencing Comm’n, *Speech to Georgetown University Law Center: A Generational Shift for Drug Sentences* 3-4 (Mar. 26, 2014).

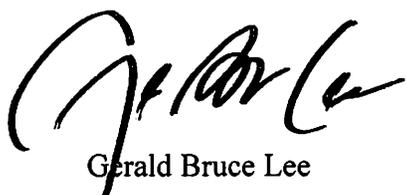
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immediate release on November 1, 2014, if the amendment is made retroactive. I am confident that the system will find a way to manage the caseload efficiently. I have no doubt that this Court together with the U.S. Attorney’s Office, the Federal Public Defender and the U.S. Probation Office will handle the cases smoothly and effectively, as before, without overwhelming the system or endangering the public.

Again, I encourage the Commission to make the “drugs minus two amendment” fully retroactive without limitation. Justice delayed is justice denied. Fundamental fairness compels the retroactive application of the “drugs minus two amendment.”

I appreciate the opportunity to share my views with the Commission. I wish you the best in your efforts as you deliberate.

Cordially,



Gerald Bruce Lee