

US Sentencing Commission
Office of Public Affairs
One Columbus Circle NE
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Washington DC 20002-8002

1/3.1/19

RE: Consideration of Amendment 791 Retroactivity For Individuals Sentenced in 2015

To Whom It May Concern;

I am writing in hopes that the Sentencing Commission would consider making Amendment 791, which was implemented on Nov. 1 2015 retroactive to individuals sentenced in 2015. While this Amendment indexed the 2b1.1 loss tables for inflation since they had not been altered since 2001, individuals sentenced between the date this was submitted for Public Comments in January 2015 to implementation on Nov. 1, 2015 were not allowed to be considered for these changes.

By way of example I offer my own case, however there are others I've seen in the legal logs who face similar situations. I pled guilty to wire fraud on January 7, 2015 with a loss of \$3.4 Million. I was sentenced on May 15, 2015 (15 days after the new guidelines were sent to Congress) and I was not able to use or have the Judge consider the pending changes to the Loss Calculation Tables of 2b1.1. Under the 2014 guidelines, my loss of \$3.4 Million called for an 18 point enhancement (range of \$2.5 Million to \$7 Million). Under the new 2015 guidelines, my loss would have been in the 16 point enhancement range (\$1,550,000 to \$3,500,000).

Since the guideline changes had not yet gone in effect, I couldn't receive the benefit. My attorney did not seek a continuance and may not have been aware of the changes while the Judge did not consider them. My sentencing range was 108-135 months and I received 108 months. In May 2017, I was once again resentenced after a successful Appeal, however, due to the rules of resentencing on appeal (3742g1) I was unable to use the new guidelines that had been in effect since they were not made 'retroactive' by the commission. I was again resentenced to 108 months, eventhough someone sentenced for the first time with the same loss amount on the same day as me received the 2 point reduction due to the new guidelines.

I'm not sure why the commission decided not to make this change retroactive but I would ask that they consider the impact on people sentenced in 2015 who were sentenced after the guidelines were submitted to Congress in April 2015 and implemented -November 2015. Potentially, the Commission could at the very minimum, consider retroactivity for individuals sentenced in 2015 on this law since the loss tables had not been indexed for inflation since 2001 and that was the sole focus of this change.

Thank you for your consideration,

Bryan Binkholder

