
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

IN THE MATTER OF POTENTIAL
SENTENCE REDUCTIONS UNDER 18
U.S.C. § 3582(C) DUE TO
RETROACTIVE APPLICATION OF
AMENDMENT 821

**GENERAL ORDER
23-010**

The Sentencing Commission has determined that Parts A and B, Subpart 1 of Amendment 821 to the Sentencing Guidelines should be applied retroactively. See U.S.S.G. App. C., amend. No. 825; U.S.S.G. §1B1.10, policy statement (eff. Nov. 1, 2023). Part A of Amendment 821 addresses guideline §4A1.1 status points, decreasing them by one point for individuals with seven or more criminal history points and eliminating status points for those with six or fewer criminal history points. Part B, Subpart 1, creates a new §4C1.1 guideline that provides a decrease of two offense levels for “Zero-Point Offenders” (no criminal history points) whose offense did not involve specified aggravating factors.

To ensure the fair and expeditious retroactive application of Parts A and B, Subpart 1 of Amendment 821, the court HEREBY ORDERS as follows:

1. Pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. §§ 3006A(a)(1) and (c), and in accordance with the retroactive application of U.S.S.G. Amendment 821, the Federal Public Defender’s Office for the District of Utah is appointed to represent any defendant previously determined to have been entitled to appointment of counsel or found indigent by the court (i) whose name appears on the lists of defendants potentially qualifying for a reduction of sentence supplied by the

United States Sentencing Commission, Administrative Office of the United States Courts, United States Probation Office, Federal Public Defender, or United States Attorney for the District of Utah or (ii) who files a pro se motion for relief seeking a sentence reduction under 18 U.S.C. § 3582(c)(2) and the retroactive application of Part A and Part B, Subpart 1 of U.S.S.G. Amendment 821.

2. The appointment the Federal Public Defender's Office is limited to those cases affected or potentially affected by the retroactive application of Parts A and B, Subpart 1 of Amendment 821, and will terminate upon the district court's ruling or the conclusion of the appellate process unless the court orders otherwise.

3. This Order does not extend to a defendant (1) who has retained counsel or had other counsel appointed to pursue the reduction, (2) who is not financially eligible for appointment of counsel under 18 U.S.C. § 3006A, or (3) whose case presents a conflict preventing the Federal Public Defender from acting on the defendant's behalf.

4. To facilitate the representation of pro se defendants, the clerk's office will electronically notify, via the court's electronic case filing system (CM/ECF), the Federal Public Defender's Office, the United States Attorney's Office, and the United States Probation Office of all motions filed by pro se defendants seeking a sentence reduction under the retroactive application of Amendment 821.

5. The Federal Public Defender's Office shall determine whether conflicts of interest preclude it from representation and shall notify the court after identifying a prohibitive conflict. After notification, the court will consider appointing a member of the Criminal Justice Act Panel.

6. The United States Probation Office for the District of Utah is authorized to disclose defendants' Presentence Investigation Reports or Modified Presentence

Investigation Reports, Judgments in a Criminal Case, and Statements of Reasons to the Federal Public Defender's Office or retained counsel and the United States Attorney's Office. In accordance with the policy of the Federal Bureau of Prisons, no Presentence Investigation Reports, Modified Presentence Investigation Reports, or Statements of Reasons shall be provided to inmates.

7. The Office of the Clerk of Court for the District of Utah is authorized to disclose to the Federal Public Defender's Office or retained counsel and the United States Attorney's Office, documents from the defendants' case files that are not otherwise available through the judiciary's Public Access to Court Electronic Records ("PACER") service to determine the defendants' eligibility, the extent for relief, and conflicts. Specifically, the clerk's office may disclose U.S.S.G. § 5K1.1 motions and orders, motions and orders related to Fed. R. Crim. P. 35, plea agreements, charging documents, notices of enhancements under 21 U.S.C. § 851, transcripts available pursuant to Judicial Conference Policy, verdicts, and motions under 28 U.S.C. § 2255. The Federal Public Defender's Office may not disclose or distribute these materials, except to subsequently appointed counsel, unless the court otherwise orders. Subsequently appointed or retained counsel may not further disclose or distribute the materials unless the court otherwise orders.

8. Representatives of the United States Attorney's Office, the Federal Public Defender's Office, and the United States Probation Office should meet regularly to review pending motions for reduction of sentence and provide recommendations to the court.

9. All motions and pleadings seeking a sentence reduction under Amendment 821, or in opposition to such reductions, must be filed in the original

criminal case. If the presiding judge in the original case is no longer available, the case must be randomly reassigned consistent with DUCrimR 57-2.


10. The court may begin to conduct sentence reduction proceedings and enter orders under 18 U.S.C. § 3582(c)(2) and Amendment 821 as of November 1, 2023. However, the effective date of any such order must be February 1, 2024, or later.

11. The briefing schedule for motions to reduce sentence under Amendment 821 shall be as follows, unless the court orders otherwise. The government's response to the motion, if any, shall be due no later than 14 days after the Probation Office files a Response or Report on the motion. Defendant's reply, if any, is due no later than 14 days after the government's response.

12. The briefing schedule in paragraph 11 applies to motions filed by pro se defendants, subject to the following exception. If the Federal Public Defender's Office (or other counsel) elects to file a supplemental or amended motion on behalf of the pro se defendant, then the government's response, if any, shall be due either 14 days after the Probation Office files its Response or Report, or 14 days after defense counsel files its supplemental motion, whichever is later.

SO ORDERED this 23rd day of October, 2023.

BY THE COURT:



ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE