

## Your Voice Matters!

*Johanna S. Zapp, Esq.*

Congress is seeking public comment of whether or not the new two point reduction amendment should be retroactive. This means that as of now, **congress does not know** if already sentenced defendants (on drug cases) would be able to receive the benefit of the two-point reduction. Congress is asking for your opinion.

You can send a letter to:

United States Sentencing  
Guidelines Commissions  
One Columbus Circle, N.E.  
Suite 2-500  
Washington, DC 20002-8002  
Attention: Public Affairs-  
Retroactivity Public Comment

Your letter should include the following:

1. The original purpose of the two-point reduction was to unburden the BOP (an in effect the government) of incarcerating non-violent drug

offenders longer than necessary. The prisons are over crowded with non-violent drug offenders because the old drug scheme required sentences that were too long. Now, with the two-point reduction, non-violent drug offenders can be released sooner, and the prison population will decline. If this new amendment is made RETROACTIVE, then it will further the purpose of the intent on reducing prison population significantly.

2. The fairness argument is that it simply would not be fair if the new amendment were not made retroactive. If it were not made retroactive, that would mean that non-violent drug offenders, perhaps more culpable than yourself, would get a better sentence just because they were lucky enough to get sentenced during a time when this new amendment was in effect.

3. Public Safety Consideration- here, I would just say that as far as public safety is concerned, the commission must have already considered this. If it isn't an issue for prospective defendants (defendants who are going to be sentenced under the new amendment,) it shouldn't be an issue for defendants who have already been sentenced.

4. The ease of implementation is a big issue for congress. They believe it will simply be too hard to make the amendment retroactive. In theory, it should be pretty easy, because the guideline numbers are just that- numbers. No one can argue with numbers. But as far as practicality goes, I would think that there would be a learning curve, all you'd need is for the government (your prosecutor) to sign off on a form that said, there was no violence, it was a drug case, his or her guidelines were less than 38, etc. It should be pretty easy once people get used to doing it.

5. You should state in your letter that the entire amendment should be retroactive.

The bottom line is that the purpose of this amendment was to decrease the prison population. If this guideline were made retroactive it would be able to do that in a very efficient way.

I want to reiterate a few things. As of now, this new two-point amendment is NOT RETROACTIVE. That means that if you have already been sentenced, it does not apply to you. Also, this two-point amendment is only for non-violent drug offenders.

# Money as a Plea Bargaining Tool

By David S. Zapp, Esq.

When a major narcotics trafficker was recently sentenced to ten years in federal court in Florida, most people were aghast. How could this be when so many people much less guilty were serving ten to twenty years in prison? Maybe it was the 130 million dollars that the defendant turned over to the United States government. You think? This defendant will get out in 8 and a half years, and enjoy the rest of the money he did not turn over. And who says crime does not pay? I say good for him and good for the Government. The government has finally come of age, thinking with its head not its heart.

In the beginning, the war on drugs, would not have permitted this plea bargain. The “war on drugs” was a moral crusade and it was unthinkable that prosecutors would do business with drug dealers, and that is how they would see it, consorting with drug traffickers. Prosecutors referred to these defendants as “merchants of death” and agents constantly asked me “how could you possibly represent ‘these people?’” This question seems almost quaint

now. If you are going to plea bargain, offer serious money. Plea-bargaining can now be a win-win situation.

And do it soon, because the age of generous plea bargains is rapidly becoming a thing of the past. I have a feeling that things are going to change in the Eastern District of New York. They have new people in place now that are going to exercise more control than ever before and the sentences may become steeper and more uniform because these supervising prosecutors unlike the line prosecutors are not emotionally invested in the defendants. They are looking at the defendants as those former “merchants of death” and whatever consideration the prosecutors give these folks will depend exclusively on their conduct and the quality of their assistance nothing else. So when a lawyer tells you he is a “friend” of the prosecutor, take it with a grain of salt.

*This newsletter is written for our readers. It's your newsletter so we eagerly seek your comments, suggestions, and questions.*

*Send your information to davidzapp@aol.com or jszapp@aol.com. Tell us what YOU want to know.*

*David Zapp and Johanna Zapp articles are available on the web at <http://davidzapp.com>*

*Mr. Zapp and Ms. Zapp (daughter) are criminal defense lawyers specializing in narcotics, extradition and money laundering cases.*



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