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“The pursuit of justice is a team effort.”

Newsletter

Legal News Briefs for Law Libraries & Defense Attorneys

GREAT NEWS FOR CRACK CASE DEFENDANTS AND THEIR FAMILIES: NEW SENTENCING GUIDELINES GO INTO EFFECT. BOP PROJECTS 20,000 DEFENDANTS ELIGIBLE FOR EARLY RELEASE!

As most readers know, the United States Sentencing Commission has now changed the sentencing guidelines for crack-cocaine cases. Further, on December 11, 2007 the Commission announced that the amended guidelines are retroactive.

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It is estimated that nearly 20,000 crack offenders are in line to have their sentences reduced by an average of two years or more. Retroactivity of the new guidelines will become effective March 3, 2008 in order to give defendants and their counsel the opportunity to prepare their motion to pursue a sentence reduction. Therefore, as will be discussed below, for those defendants who have already been sentenced and want to pursue a reduction in their sentence, NLPA would recommend that their motion be ready to be filed as soon as possible. The new guidelines became effective March 3, 2008.

CRACK AMENDMENT

To recap, the U.S. Sentencing Commission issued the guideline amendment on November 1, 2007 which outlined new procedures for calculating the penalties in cases involving cocaine base (crack-cocaine)

as well as certain criminal history factors. These new guidelines now being in effect are being utilized on federal cases with applicable charges where a defendant has yet to be sentenced. Now that these modifications are held to be retroactive, the long asked questions have now been answered!

Now that this decision has been issued, NLPA stands ready to assist these defendants and their attorneys in the preparation of research and pleadings based on these new developments. NLPA is currently offering several new services to assist in implementing these new guidelines and the *Kimbrough* case as well as determining how the new guidelines apply to a specific case.

- 1) For those applicable defendants who have yet to be sentenced, NLPA is able to assist counsel in the preparation of sentencing arguments not only to address the new guidelines and the

Kimbrough case but, also the numerous downward departures and alternative sentencing program options that may exist in the case.

2) For those applicable defendants who are currently pursuing a direct appeal, NLPA is able to assist counsel in the preparation of supplemental research designed to argue the application of these new guidelines and the *Kimbrough* case. In addition to this argument, NLPA also offers assistance in the preparation of the appeal brief itself to outline additional arguments for counsel that can be made on the appeal.

3) For those applicable defendants who are pursuing federal post-conviction relief, a number of options may exist:

a) If a post-conviction motion pursuant to 18 USC §2255 has already been filed and is pending, NLPA is able to assist counsel in the preparation of supplemental research to argue the application of these new guidelines and the *Kimbrough* case.

b) If a §2255 has yet to be filed but is still within time to be filed, NLPA can assist counsel in preparing that motion and include not only arguments for the application of the new guidelines and the *Kimbrough* case but also the additional arguments that may

be available in each specific case.

c) If a §2255 motion has already been pursued and ruled upon or, if this motion was never pursued and the deadline has now passed, NLPA can assist in the preparation of a case evaluation to outline the specific motion or avenue available to assist in having the case reopened. Such motions would be filed under §3582(c)(2), §2255(4), or §2241. These motions would only deal with two issues - (1) the retroactive application of the amendments and; (2) factors under §3553(a) justifying a lesser sentence. As part of its evaluation research, NLPA would be able to identify which avenue is best in each case and also could determine if any other possible arguments exist that could be raised in a post-conviction motion.

If you or your client are interested in obtaining further information about NLPA's assistance in any of these areas, please contact us.

If you feel that these new guidelines would be beneficial to your case and would like to get more information on how NLPA can help, please contact NLPA.

ANALYSIS OF

CRACK-COCAINE OFFENDERS

The debate of opinions continues on the application of the new crack-cocaine guidelines. For sentencing purposes the rules equate one gram of crack-cocaine to 100 grams of powdered cocaine. Many judges agree that this equation makes little sense. The U.S. Sentencing Guidelines Commission obviously also agrees with this opinion in view of the guideline amendments that were handed down on November 1, 2007. Congress, however, doesn't appear to be willing to soften the blow of the sentencing system involving crack-cocaine cases which began primarily in the height of the Reagan administration's war on drugs. The Bush administration also insists that judges be kept in harness.

During the past five years approximately 25,000 defendants have been sentenced in federal cases involve crack-cocaine charges. Their drug sentences on average are approximately 50% longer than those who were sentenced on powder cocaine charges. Statistically most of those who are sentenced for crack-cocaine charges are African American men. As the result of the United States Supreme Court decision in the *Kimberly v. United States* case which challenged how the calculation of sentences are imposed based upon crack-cocaine charges.

During 2006, 81% of those sentenced in federal crack-cocaine cases were African American. Only 27% of those sentenced in powder cocaine cases were African American. To further break down this statistical reviews conducted, of 5,619 offenders in crack-cocaine cases, 81% of them are Black, 9% of them are White, and equal 9% of them are Hispanic and 1% is listed as "other". Of a total of 5,830 total offenders involved in powder cocaine cases, 27% of them are Black, 15% of them are White, another 1% are classified as "other" and 57% of them are Hispanic.

Some additional food for thought on the subject of crack-cocaine sentences, crack-cocaine is the **only** drug that carries a mandatory sentence for first offense possession. A person sentenced in federal court for possessing 5 grams automatically receives a 5-year sentence. The maximum federal sentence for simple possession is one year in prison for other drugs. The 100 to 1 disparity basically translates that a person caught with 5 grams of crack-cocaine (the equivalent of five Equal sugar packets) gets a mandatory minimum of five years in prison. However, it takes 500 grams of powder cocaine (more than a one-pound bag of sugar) to merit that same punishment.

With respect to circuit court participation, based on recent studies we can determine that the 4th Circuit most certainly will be very busy if and when the guidelines are applied retroactively. In a calculation of all federal circuits (including Washington, DC), the Fourth Circuit has more than 26% of the offenders that were sentenced in its district courts for crack-cocaine - more than any other circuit. This is based on a total of 19,500 cases that were determined as eligible.

ANALYSIS OF CRIMINAL HISTORY AMENDMENTS

While the criminal history amendments are seemingly modest, they are very beneficial and represent important changes in criminal history.

(1) **USSG 4A1.2(c)(1)(A)** (regarding "term of probation of at least one year") will be amended to provide that a misdemeanor/petty offense sentence for the listed minor offenses will count if there is sentence of probation of GREATER than one year. This will cut out the inclusion of, for example, of numerous driving offenses that are only counted because the defendant had received one year of unsupervised probation. This is a major, important,

beneficial change. It will affect, easily, hundreds of defendants a year, keeping them in lower criminal history categories and in many cases keeping them safety valve eligible.

(2) **The definition of "related cases" to be used in USSG 4A1.2(a), cmt. n. 3** is being changed.

Currently, multiple sentences can be considered related offenses and are counted as one offense if the offenses were consolidated for plea and sentencing. This has required in many circuits a formal "consolidation order" for plea and sentencing, which, at least in many states, never occurs, even though cases were arraigned, pleaded, sentenced (to concurrent time) on the same day. Under the proposed amendment, multiple sentences are still counted separately if there is an intervening arrest. However, they are counted as a single sentence (i.e., once, not twice) if there are no intervening arrest AND either (1) the offenses were in the same charging instrument OR (2) sentences were imposed on the same day. This is a beneficial change and will result in many cases of defendants receiving only 3 criminal history points for two sentences on the same day, rather than 3 plus another 3.

Here is an example of how this is an improvement: A defendant committed two burglaries on different dates, was arrested for both on the same date (no intervening arrest, § 4A1.2 App. N. 3), indicted in two separate indictments, sentenced on the same day. Under the current rule, the defendant would likely receive 3 points for each burglary; under the Amendment, the two burglaries are the "related offenses" and he receives only 3 points. Additionally, in this example making the two priors "related" also would eliminate the application of the Career Offender guideline. Application Note 1 to § 4B1.1 refers to USSG § 4B1.2 for the definition of "two prior felony convictions." Section 4B1.2 (c) requires that "the sentences for at least two of the aforementioned felony convictions are counted separately under the

provisions of 4A1.1(a), (b), or (c)" before the Career Offender enhancement can apply. Under the Amendment, the defendant convicted of the two prior burglaries above would not be subject to the Career Offender guideline because he does not have two prior felony convictions that were counted separately as defined in 4B1.2(c).

Retroactive Application of the Crack Amendments: Sometimes it is clear that an amendment to the Guidelines applies retroactively because USSG § 1B1.10 lists all the amendments that apply retroactively. In such a case, 18 USC § 3582(c)(2) is the proper section of the U.S. Code to invoke if a defendant is attempting to request retroactive application of an amendment to the Guidelines.

Thus, depending on several factors, attorneys representing defendants who have already been sentenced may ask the court to apply the Amendments to their clients. NLPA believes those various options include:

(1) Amendments listed under § 1B1.10 may be applied in a motion filed under 18 USC § 3582(c)(2) If the amendments are not listed under § 1B1.10, other options exist:

(2) Counsel representing defendants currently on direct appeal or pursuing a timely §2255 motion may request to supplement the pending arguments asking that the applicable amendment be applied retroactively.

(3) Counsel representing defendants who have either lost their appeal or missed their §2255 filing deadline, may attempt to seek application of the amendments in a motion filed pursuant to §2255(4) depending on what has been filed previously in a particular defendant's case.

If you have a client who is awaiting sentencing, on appeal or wants to pursue a post-conviction motion and desires to have NLPA assist you in preparing research concerning the Kimbrough case, the new sentencing

guideline amendments and all other appropriate downward departures, contact NLPA.

KIMBROUGH V. US

Supreme Court rules that judges may consider harshness of crack policy in sentencing. On December 10, 2007 the Supreme Court ruled 7 to 2 today that a federal district judge's below-guideline sentencing decision based on the unfairness of the 100 to 1 quantity disparity between powder and crack cocaine was permissible.

In *U.S. v. Kimbrough* case, Mr. Kimbrough, a black veteran of the Gulf War, was charged with firearm possession as well as crack cocaine and powder cocaine after police officers spotted him in a car near a known drug-dealing area.

He pleaded guilty and had no prior offenses. The sentencing judge in this case referred to the crack guidelines as "ridiculous" and instead of imposing the 19 to 22 year sentence recommended as Mr. Kimbrough's sentencing guidelines, he imposed 15 years.

The government then cross appealed this decision and won, forcing Kimbrough to argue his case in the Supreme Court. The Kimbrough case is not challenging the crack-cocaine sentencing guidelines but, instead, will determine whether judges can set lower sentences after taking into consideration criticism of the crack-cocaine guidelines. The Bush administration had been insisting that judges should not be able to make this consideration but, that Congress should be responsible for revising the crack-cocaine sentencing rules instead. Unfortunately for the Bush Administration the Supreme Court has agreed to give federal judges the right to reduce crack sentences.

SUPREME COURT: JUDGES CAN REDUCE CRACK SENTENCES

New York Times
December 10, 2007

By THE ASSOCIATED PRESS

WASHINGTON (AP) -- The Supreme Court on Monday said judges may impose shorter prison terms for crack cocaine crimes, enhancing judicial discretion to reduce the disparity between sentences for crack and cocaine powder.

By a 7-2 vote, the court said that a 15-year sentence given to Derrick Kimbrough, a black veteran of the 1991 war with Iraq, was acceptable, even though federal sentencing guidelines called for Kimbrough to receive 19 to 22 years.

In a separate sentencing case that did not involve crack cocaine, the court also ruled in favor of judicial discretion to impose more lenient sentences than federal guidelines recommend.

The challenges to criminal sentences center on a judge's discretion to impose a shorter sentence than is called for in guidelines established by the U.S. Sentencing Commission, at Congress' direction. The guidelines were adopted in the mid-1980s to help produce uniform punishments for similar crimes.

The cases are the result of a decision three years ago in which the justices ruled that judges need not strictly follow the sentencing guidelines. Instead, appellate courts would review sentences for reasonableness, although the court has since struggled to define what it meant by that term.

Kimbrough's case did not present the justices with the ultimate question of the fairness of the disparity in crack and powder cocaine sentences. Congress wrote the harsher treatment for crack into a law that sets a

mandatory minimum five-year prison sentence for trafficking in 5 grams of crack cocaine or 100 times as much cocaine powder. The law also sets maximum terms.

Seventy percent of crack defendants are given the mandatory prison terms.

Kimbrough is among the remaining 30 percent who, under the guidelines, get even more time in prison because they are convicted of trafficking in more than the amount of crack that triggers the minimum sentences.

Justice Ruth Bader Ginsburg, writing for the majority, said, "A reviewing court could not rationally conclude that it was an abuse of discretion" to cut four years off the guidelines-recommended sentence for Kimbrough.

Justices Samuel Alito and Clarence Thomas dissented.

SENTENCING COMMISSION VOTES IN FAVOR OF CRACK COCAINE RETROACTIVITY

Courtesy of FAMM

WASHINGTON, D.C.: Families Against Mandatory Minimums (FAMM), the nation's leading sentencing reform organization with 13,000 members -- many of whom are incarcerated people and their families -- praises the U.S. Sentencing Commission for its courage and leadership on improving crack cocaine sentencing policies for future defendants and current prisoners.

Today in an historic vote, the Commission agreed to allow prisoners serving crack cocaine sentences to seek sentence reductions that went into effect on November 1. Retroactivity will affect 19,500 federal prisoners, almost 2,520 of whom could be eligible for early release in the first year. Federal courts will administer the application of

the retroactive guideline, which is not automatic. Courts may refuse to grant sentence reductions to individuals if they believe they could pose a public safety risk.

"The Sentencing Commission made the tough but fair decision to remedy injustice, showing courage and leadership in applying the guideline retroactively. Clearly, justice should not turn on the date an individual is sentenced," said Julie Stewart, president and founder of FAMM. "Retroactivity of the crack guideline not only affects the lives of nearly 20,000 individuals in prison but that of thousands more - mothers, fathers, daughters and sons - who anxiously wait for them to return home," said Stewart.

Many FAMM members, including Lamont and Lawrence Garrison, will benefit from retroactivity. Arrested just months after graduating from Howard University, Lamont received 19 years and Lawrence received 15 years, respectively, after being accused of conspiring to distribute crack and powder cocaine. Both brothers could receive sentence reductions of between three and four years.

The U.S. Sentencing Commission has repeatedly advised Congress since 1995 that there is no rational, scientific basis for the 100-to-1 ratio between crack and powder cocaine sentences. The Commission has also identified the resulting disparity as the "single most important" factor in longer sentences for blacks compared to other racial groups.

Yesterday, the Supreme Court ruled that judges can consider the unfairness of the 100-to-1 ratio between crack cocaine and powder cocaine sentences and may impose a sentence below the crack guideline in cases where the guideline sentence is too severe. However, neither the new guideline nor its retroactivity changes the statutory mandatory minimums that

retain the 100-to-1 quantity disparity between crack and powder cocaine. "To insure equal justice for all defendants, Congress must act to address the mandatory minimums that created the cocaine sentencing disparity in 1986," said Stewart.

FAMM spearheaded the effort to make the crack cocaine guideline change apply to people already in prison, helping generate over 33,000 letters to the Sentencing Commission in support of retroactivity. FAMM members from across the country also attended the Commission's public hearing on retroactivity in Washington, D.C. on November 13 and the vote on December 11, bearing photographs of their incarcerated loved ones.

RECENT MODIFICATIONS OF CRACK GUIDELINES.

Since the new guidelines have come out there have been many false rumors spreading through the prison system about how to take advantage of the changes in the guidelines. The information set forth comes from "The Bulletin" published by Robinson & Brandt, P.S.C. and is provided with their authorization to help provide additional information that is important to all crack defendants and their family members.

First, if you were sentenced based upon crack cocaine and you received a sentence that is higher than the statutory minimum punishment, we believe you should file for application of the new crack cocaine amendment under 18 U.S.C. § 3582(c)(2). As discussed below, even if you were enhanced under U.S.S.G. § 4B1.1 as a career offender, and even if your Guidelines range of imprisonment is unchanged when the two-level reduction is applied, judges should still have the authority (and we believe the duty) to reduce sentences based upon

the sentencing factors of 18 U.S.C. § 3553(a).

Second, you do not *need* an attorney to file a motion under § 3582(c)(2) requesting a reduced sentence. But because the amount of time cut from an inmate's sentence can be greatly affected by the arguments and issues presented in the § 3582 motion, it is a horrible idea to try and file for a reduced sentence without legal representation. Therefore, we recommend that all eligible inmates with the financial resources available should hire their counsel of choice.

Third, the amount of sentencing reduction for each inmate can change depending on many factors. In fact, judges reviewing motions under § 3582(c)(2) have the authority to not reduce the defendants' sentences at all if they believe a reduction is inappropriate. This is another reason why inmates should not simply fill out a form motion and file it with the district court. For many inmates, the amount of sentencing reduction will depend on the approach taken by the attorney the inmates chooses for the case.

The aggressive approach advocated by the attorneys at *Robinson & Brandt, P.S.C.* is for a § 3582(c)(2) motion to include the equivalent of a sentencing memorandum discussing all of the good things about the defendant in the context of § 3553(a) factors and the mandate not to impose a sentence that is greater than necessary to achieve the goals under § 3553(a)(2). In making this argument, we are requesting that the court re-sentence the defendant *below* what is called for by the two-level reduction in the offense level. The recent U.S. Supreme Court decisions in Kimbrough and Gall give additional support to this approach.

If the § 3582 motion does anything less than this, we believe the defendant is not being represented properly and may lose a valuable opportunity to get less time in prison and more time on the streets. This is why we recommend

that inmates with financial resources retain their counsel of choice. If an inmate's supporters are able to hire private counsel but choose not to retain a new attorney, they may risk getting an attorney who believes that filling out a form or filing a broiler-plate motion is all that needs to be done. Even worse, the inmate risks having no § 3582 motion filed at all or no representation at all.

False Rumors

Unfortunately, we have heard many false rumors that could convince thousands of inmates not to file when many (if not most) of those same inmates absolutely should be taking action and filing a § 3582 motion. Most of the broad statements we are hearing are simply wrong. Do not let the rumors convince you, or someone you know, not to file for a reduction. This historic change could mean a lower sentence for many more inmates than you might expect.

False Rumor: Career Offenders Cannot File. Wrong! It is true that *some* defendants who were found to be career offenders may not end up with relief. It is also true that career offenders (and others) who were sentenced at a statutory mandatory minimum will not obtain relief under § 3582(c)(2). But the overly-simplistic advice that no career offender can get any relief is simply false. In fact, many defendants found to be career offenders may still obtain relief with a § 3582 motion.

For example, many defendants with career offender labels were sentenced based upon drug amounts and other enhancements despite the fact they also qualified under § 4B1.1 as a career offender. For example, if the defendant was facing a statutory maximum of 40 years, his offense level under § 4B1.1 would be level 34. However, that same defendant could have a base offense level higher than 34 because of the amount of crack cocaine and possibly other enhancements. His offense level could be as high as 38 for reasons other than the career offender finding. With

total offense level 38 and category VI, his Guidelines range of imprisonment would be 360 to 480 months (the statutory maximum).

With application of the 2007 amendment to the crack cocaine penalties, the total offense level in this example would drop to 36. The career offender finding would not prevent that decrease. With total offense level 36 and category VI, the new Guidelines range would be 327 to 405 months. That alone could mean a significant decrease to the sentence. But the recalculation of the guideline range and the new sentence would also mean the defendant could receive a sentence well *below* the new range based on the rulings in Booker, Gall, and Kimrough and factors considered under § 3553(a). As a result, despite the fact that the defendant was a "career offender" and was told the 2007 crack amendment could not help him, a huge opportunity for relief existed.

Also, many defendants with career offender labels have noticed that, while their Guidelines *calculations* might be different because of the crack amendment, the final Guidelines range would be the same simply because of the § 4B1.1 enhancement. We have heard rumors that those defendants believe (and that some attorneys are advising defendants) that a § 3582 motion cannot help. *We strongly disagree.* Why we disagree relates to the next issue – whether defendants whose Guidelines calculations would change should seek reductions in sentences based upon the amendment.

False Rumor: Defendants Who Will Have the Same Guidelines Range Have No Chance For Relief. Wrong! It is true that application of the amended crack cocaine penalties will mean for some defendants a two-level reduction in their offense level but the same Guidelines range. For example, a defendant with Criminal History IV whose offense level drops from 41 to 39 will still have a Guidelines range of 360 months to life. But we believe the focus is not whether the final range

changes – the focus should be whether the offense level would change so that the district court needs to recalculate the Guidelines.

It is true that the Sentencing Commission has suggested through its revised policy statements that a new, full re-sentencing hearing is not required. As a result, many defendants and attorneys have concluded that a § 3582 motion can have no positive effect unless the defendant's guidelines range is lowered to a brand new range based solely upon the two-level crack cocaine penalty reduction. We believe this approach is incorrect. Thanks to Booker, the Guidelines are not mandatory anymore. This means the policy statements are not mandatory and judges are not required to adhere to them. In truth, district court judges have the authority and discretion to ignore the policy statements and hold a full, new sentencing hearing at which all sentencing protections apply. And if all sentencing protections apply, even having a new Guidelines calculation gives defendants the opportunity to ask for reductions in those calculations *beyond* the two-level reduction based on factors under § 3553(a), as required in Gall and Kimrough.

For these reasons, we are advising many inmates (especially those who were sentenced under the mandatory Guidelines years ago) to strongly consider taking action under § 3582(c)(2). Those defendants can request the lowered offense level that applies because of the 2007 crack amendment, and a lowered sentence in light of cases that now apply prospectively to the defendant's case. This could include a request for a sentence below what is called for based on the new Guidelines calculations based upon Kimrough and Gall.

False Rumor: Everyone Gets a Court-appointed Attorney. Wrong! Many Inmates will be eligible for court-appointed attorneys. For inmates without any supporters or financial sources, this may help guarantee a minimal level of representation.

However, inmates will not have their choice of counsel and will have to hope for the best with the attorney assigned to them by the government. Some court-appointed attorneys apparently believe that much fewer defendants are eligible for relief than should file. That means that court-appointed attorneys may not take action in your case or other cases in which a § 3582 motion should be filed. We have already seen that some court-appointed attorneys have decided that they will move only for a two-level reduction (not a sentence below the Guidelines range that we are pushing for), and file what amounts to form motions requesting the two level reduction. Our advice is for inmates to make sure that they have counsel for the § 3582 motion and that the attorney handling the motion is going to be aggressive. If not, and if the inmate is able to do so, retain private counsel that follows the aggressive approach advocated by the attorneys at *Robinson & Brandt, P.S.C.*

What To Do: The bottom line is that *now is the time* to take action. For defendants still within time to appeal or who are now on appeal, make sure your attorney is raising the amendments as grounds for a new sentence or a new sentencing hearing. For the defendants sentenced based

upon crack cocaine and whose cases became final before November 1, 2007, now is the time to retain counsel to prepare and file an aggressive § 3582 motion and the equivalent of a sentencing memorandum.

INTERESTED IN HIRING NLPA?

If you're considering hiring someone to assist with your criminal proceedings, NLPA offers realistic fees that may suit you in your pursuit of finding top-notch yet affordable legal research & consulting assistance. We believe you will find our fees to be extremely competitive compared to other legal research firms in the country. We also have several alternative options for paying our fees.

- NLPA can accept payment via cashier's check or money order through the mail.
- We also can accept credit/debit card payments over the telephone as well as electronic check (check by phone) payments over the telephone.
- For most services provided

NLPA also offers payment plans as well. With a minimum down payment you could soon be financing your legal fees.

Therefore, if you are interested in discussing the financing options available to you for your specific matter, please contact us.

NLPA assists in virtually every stage of criminal proceedings from pretrial to post-conviction and also assists in immigration matters. For additional information on the services offered by National Legal Professional Associates please contact our offices.

This newsletter is designed to Introduce you to NLPA. As NLPA is not a law firm, professional services are only provided to licensed counsel in all areas that involve the practice of law. NLPA has created this publication to provide you with authoritative and accurate information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. This publication is not meant to be a substitute for legal or other professional advice, which NLPA is not rendering herein.

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SUPREME COURT RULES THAT JUDGES MAY CONSIDER HARSHNESS OF CRACK POLICY IN SENTENCING

Decision Comes on Eve of U.S. Sentencing Commission Vote to Reduce Crack Sentences for Prisoners

The Supreme Court ruled 7 to 2 today that a federal district judge's below-guideline sentencing decision based on the unfairness of the 100 to 1 quantity disparity between powder and crack cocaine was permissible. Justice Ruth Bader Ginsburg wrote the decision in the case, *Kimbrough v. U.S.* (06-6330).

"At a time of heightened public awareness regarding excessive penalties and disparate treatment within the justice system, today's ruling affirming judges' sentencing discretion is critical," said Marc Mauer, Executive Director of The Sentencing Project. "Harsh mandatory sentences, particularly those for offenses involving crack cocaine, have created unjust racial disparity and excessive punishment for low-level offenses."

The Court's decision in *Kimbrough* comes at a time of unprecedented interest in reforming the mandatory minimum sentencing policy for crack cocaine offenses. Bipartisan legislation has been introduced in Congress and hearings are expected early next year. Moreover, tomorrow, the U.S. Sentencing Commission is expected to vote on whether its recent sentencing guideline reduction for crack cocaine offenses will apply retroactively to people currently serving time in prison.

Review today's decision in *Kimbrough* at: <http://www.scotusblog.com/wp/wp-content/uploads/2007/12/06-6330.pdf>

UNITED STATES SENTENCING COMMISSION APPROVES CRACK REFORM FOR FEDERAL PRISONERS!

The day after the Supreme Court affirmed a judge's decision to sentence below the guideline range based on the unfairness of the crack cocaine sentencing disparity, the United States Sentencing Commission today voted unanimously to make retroactive its recent guideline amendment on crack cocaine offenses. The USSC's decision now makes an estimated 19,500 persons in prison eligible for a sentence reduction averaging more than two years. Releases are subject to judicial review and will be staggered over 30 years. The Sentencing Project applauds the USSC for responding at this heightened time of public awareness about excessive penalties and disparate treatment within the justice system.

"The Commission's decision marks an important moment not only for the 19,500 people retroactivity will impact, but for the justice system as a whole," stated Marc Mauer, Executive Director of The Sentencing Project. "Today's action, combined with the Court's decision yesterday, restores a measure of rationality to federal sentencing while also addressing the unconscionable racial disparities that the war on drugs has produced." The Sentencing Project estimates that once the sentencing change is fully implemented, there will be a reduction of up to \$1 billion in prison costs. Because African Americans comprise more than 80% of those incarcerated for crack cocaine offenses, the sentencing reform will also help reduce racial disparity in federal prisons. The Commission sets the advisory guideline range that federal judges use when sentencing defendants. In May the Commission recommended statutory reforms and proposed to Congress an amendment to decrease the guideline offense level for crack cocaine offenses. The amendment went unchallenged by Congress and went into effect on November 1st. The Commission's action today makes that guideline change retroactive to persons sentenced prior to November 1st. The guideline changes do not affect the mandatory minimum penalties that apply to crack cocaine, which can only be addressed through Congressional action.

"Justice demands that Congress take the next step and eliminate the harsh mandatory minimums for low-level crack cocaine offenses," said Mauer. The Commission's vote comes a day after the United States Supreme Court ruled 7-2 in *Kimbrough v. United States* that a federal district judge's below-guideline sentencing decision based on the unfairness of the 100 to 1 quantity disparity between powder and crack cocaine was permissible. In June, Sen. Joseph Biden introduced the Drug Sentencing Reform and Kingpin Trafficking Act of 2007, legislation which would equalize the penalties for crack and powder cocaine offenses. Biden's bill, S. 1711, aims to shift federal law enforcement's focus from street-level dealers towards high-level traffickers.

About NLPA

NLPA is a research and consulting firm, owned and staffed by attorneys, and dedicated to the professional mission of providing counsel, research, and related work product to members of the Bar. Our ownership structure includes attorneys licensed to practice before many local, state, and federal courts; however, NLPA is not a law firm and provides no "front line" legal services. On the other hand, we are much more than your typical paralegal service as our work is prepared by attorneys. Our sole purpose is to provide research and consulting assistance by lawyers, for lawyers . . . and their clients. With cutting-edge computer research capabilities, an experienced and top quality staff, and more than sixteen years' experience, NLPA is well-positioned to provide the types of assistance members of the Bar need. You are important to us and we hope we can commence and maintain a long-term relationship with you. Please know that we are here to assist in all your needs. If you would like to know more about the services we offer, please contact us at:

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