

NATIONAL LEGAL PROFESSIONAL ASSOCIATES

Case Analysis and Research Division
Margaret A. Robinson Advocacy Center
11331 Grooms Road, Suite 1000
Cincinnati, OH 45242
Fax (513) 247-9580
Telephone (513) 247-0082

MEMORANDUM

TO: ALL INTERESTED COUNSEL

FR: NATIONAL LEGAL PROFESSIONAL ASSOCIATES

**RE: TECHNIQUES FOR REDUCING SENTENCES OF DEFENDANTS
WHOSE BASE OFFENSE LEVEL EXCEEDED 38**

NAME: HAWTHORNE - ANOTHER NLPA VICTORY!

NLPA is often contacted by defendants who were sentenced with a base offense level higher than 38 who are interested in pursuing a reduction in their sentence in light of the modification of the Federal Sentencing Guidelines Drug Table found under Section 2D1.1 of the Federal Sentencing Guidelines. The case of United States vs. Hawthorne is an example of how through a properly prepared 2255 motion a defendant's sentence can be reduced raising this issue.

As I am sure you are already aware, in 1994 the Drug Table, found under Section 2D1.1 of the Federal Sentencing Guidelines, was amended. In this amendment the Commission lowered the maximum offense level for quantity based determinations to 38. In short, the Commission by virtue of this amendment eliminated levels 38, 40, and 42 and established level 38 as the upper limit. In the commentary to the amendment the Commission made it clear that the amendment should have retro-active application. Unfortunately, however, many defendants are still serving a sentence which was based upon a base offense level higher than level 38 who are entitled to relief by means of a sentence reduction, but who have not taken appropriate action by means of the filing of a 2255 motion to obtain the sentencing reduction to which they are entitled.

This was exactly what the case was with respect to NLPA's client, Christopher Hawthorne. Mr. Hawthorne had been sentenced initially to a term of confinement of 292 months. However, Mr. Hawthorne subsequently retained NLPA to work with his attorney to prepare a 2255 motion raising the base offense level as one of the basis of his requested relief. As the attached Memorandum and Order issued by the Honorable Howard F. Sachs United States District Judge for the Western District of Missouri clearly indicates, Judge Sachs agreed with NLPA's position and ordered Mr. Hawthorne's sentence reduced by almost 5 years.

If you have a client whose sentence has been imposed utilizing a base offense level higher than 38, your client may be entitled to significant relief by means of the filing of a 2255 motion to address this issue. It is important to understand that although the recent amendment has been ruled to retro-actively apply in such cases, that relief is not automatic. Therefore, should you desire to have NLPA assist you in the preparation of a 2255 motion to address this issue, please contact us. NLPA stands ready to assist with the research and preparation of any pleadings to help protect the rights of your clients. We work on a daily basis to ensure that your client's receive the most up-to-date research available and that any intervening change in the law which may benefit your client is used to protect his rights.

NLPA WE CARE, WE LISTEN, WE GET RESULTS!