

NATIONAL LEGAL PROFESSIONAL ASSOCIATES

Margaret A. Robinson Advocacy Center

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MEMORANDUM

TO: DEFENSE COUNSEL

FROM: NATIONAL LEGAL PROFESSIONAL ASSOCIATES

**RE: UTILIZING THE LIKELIHOOD OF SUCCESSFUL DRUG TREATMENT
WHILE INCARCERATED AS GROUNDS FOR DOWNWARD
DEPARTURE FROM FEDERAL DRUG**

NAME: HERRINGTON

We are often contacted by inmates who have been sentenced under the new Federal Sentencing Guidelines who feel that the court did not base their sentencing guideline range (and hence, their resulting sentence under the Federal Sentencing Guidelines) upon a full and accurate understanding of their case and their personal situation.

The likelihood of successful drug treatment while incarcerated as the basis for a downward departure in the otherwise applicable guideline score has recently been addressed by the federal courts. In the case of U.S. v. Herrington, D.C. D.C. #89-0138-01-LFO, the U.S. District Court for the District of Columbia held on July 13 that the likelihood that a first-time drug offender could successfully complete treatment for drug addiction while in prison is a factor not considered in the Federal Sentencing Guidelines and, therefore, can serve as a basis for a downward departure of the otherwise applicable sentencing range by the sentencing court. In its decision, the court held that section 5H1.4's rejection of drug addiction as a grounds for departure does not foreclose departure on the related, but different, issue of whether a drug defendant will likely overcome his addiction while he is incarcerated. On this basis, the court departed downward from the 97-month term of incarceration which otherwise would have been applicable under the Sentencing Guidelines in favor of a sentence of 60 months, the statutory minimum set by 21 United States Code Section 841. This departure obviously resulted in the saving of approximately four years on the length of the otherwise applicable sentence.

If you believe that in imposing the sentence in your case that the court failed to take into account the likelihood that you could successfully complete a drug treatment program while incarcerated as a basis of a significant downward departure in your sentence, and would like help in the formulation of a motion for modification of your sentence, raising this as well as other issues which may be applicable in your case, please have your counsel contact National Legal Professional Associates.

NLPA, WE CARE, WE LISTEN, WE GET RESULTS!

THIS INFORMATIONAL MEMORANDUM 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.

