

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA,)
VS.) **1:99-cr-445-JHH-TMP**
TIMOTHY JOHN BROWN.)

MEMORANDUM OF DECISION

On December 2, 1999 a two count indictment, each count charging defendant with a violation of 18 U.S.C. § 922(g)(1), was filed. Following a trial on the two charges the jury returned a verdict of guilty on each charge. Sentence was imposed June 9, 2000.

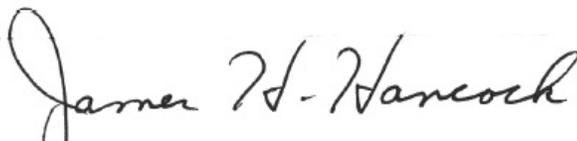
The court has before it the request to proceed (doc. #37) for a modification of defendant's sentences pursuant to the recent "crack amendment." The court will treat the request as a motion, but the motion is due to be denied because defendant's conviction and guideline level in this case were not based on conduct which involved crack cocaine. A separate order will be entered.

NOTICE CONCERNING APPEALS

A § 3582(c)(2) motion is a continuation of the criminal proceeding; therefore, a notice of appeal must be filed within ten days from the entry of the judgment or

order being appealed. *See, United States v. Fair*, 326 F.3d 1317, 1318 (11th Cir.2003); *United States v. Starks*, 2008 WL 351386 (11th Cir. 2008); *Fed. R.App. P.* 4(b)(1)(A)(i). If defendant was represented by appointed counsel at trial or on appeal, defendant is not required to file a new application to proceed *in forma pauperis* on appeal from the denial of the § 3582(c)(2) motion. If defendant was represented by retained counsel at trial or on direct appeal but believes he is now unable to afford counsel, defendant should file an application to proceed *in forma pauperis* (accompanied by a certified copy of prison account statements for the last six months) when he files notice of appeal from the denial of the § 3582(c)(2) motion. The Clerk is DIRECTED to provide defendant with an application to proceed *in forma pauperis* form.

DONE this the 15th day of August, 2008.



SENIOR UNITED STATES DISTRICT JUDGE