

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

UNITED STATES OF AMERICA)

v.) 2:04-CR-135-JHH-TMP

ALFRED ALLEN THORNTON, JR.)

**MEMORANDUM OF OPINION REGARDING ORDER GRANTING
MOTION FOR REDUCTION OF SENTENCE**

The movant, Alfred Allen Thornton, Jr., acting *pro se*, filed the above-styled motion, (doc. #24) on March 6, 2008, asking that this court reduce his sentence pursuant to 18 U.S.C. § 3582 (c)(2), effective November 1, 2007 and made retroactive by USSG §1B1.10, effective March 3, 2008. The court finds by separate order that the motion for reduction of sentence should be

GRANTED.

In May 2007, the U. S. Sentencing Commission (U.S.S.C.) submitted a group of proposed amendments to the Sentencing Guidelines as they have done annually since 1987. One of these amendments, number 706, represented the U.S.S.C.'s attempt to mitigate the sentencing disparity for defendants convicted of crack cocaine offenses as opposed to powder cocaine offenses. In the absence of congressional action to amend the 100:1 ratio found in the Title 21

statutes, the U.S.S.C. proposed a method to reduce the potential sentences by lowering the applicable guidelines for quantities of crack by two levels, thereby creating a ratio ranging from about 25:1 to about 80:1 within the Guidelines framework.

All of the proposed amendments, including the crack amendment, became effective on November 1, 2007.¹ Then in December 2007, following a period of public discussion, the U.S.S.C. decided to make the crack amendment retroactive. The effective date for retroactive application of the crack amendment became March 3, 2008. The U.S.S.C. also amended Guideline § 1B1.10 to include the crack amendment (hereinafter referred to as “the amended policy statement”). As such, as of March 3, 2008, the crack amendment and amended policy statement apply to all relevant sentences, old and new. All of this was done pursuant to the U.S.S.C.’s authority found at 28 U.S.C. § 994(u) and 18 U.S.C. § 3582(c).

With that background, the court now turns to the current motion (doc. #24) of Alfred Allen Thornton, Jr. to modify his term of imprisonment under 18

¹ At this point, the crack amendment had no retroactive application.

U.S.C. § 3582(c)(2). The motion seeks the benefit of the crack amendment and the amended policy statement. The focus of the § 3582(c)(2) motion is the 135-months sentences imposed to run concurrently under Counts 1, 2, 3 and 4.²

The following chart sets forth the application of the crack amendment to the instant case:

	<u>Original Sentence</u>	<u>Retroactive Sentence Adjustment</u>
Total Offense Level	31	29
Criminal History Category	III	III
Imprisonment Range	135 - 168 months	120 (stat. min) - 135 months
Projected Release Date	7/10/2014	

A review of the sentencing issues now confronting this court includes, but is not limited to, the following:

² All four counts charged him with distribution of cocaine base, Counts 1 and 2 charging an amount of 5 grams or more and Counts 3 and 4 charging an amount of 50 grams or more. Defendant entered a plea of guilty to these charges. The amount of crack totaled 191.5 grams.

1. the movant was originally sentenced to 135 months, which was the bottom of the correctly-computed guidelines range;
2. as computed in accordance with the amended guideline, the bottom of the range is the statutory minimum sentence of 120 months; and,
3. Movant's criminal history as reflected in the presentence report, and custodial behavior do not indicate that there are public safety issues raised by his release at an earlier date.

Pursuant to U.S.S.G § 1B1.10 (b), this court finds that the movant is eligible for consideration for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2) and concludes that the crack amendment applies to the circumstances of the movant. Furthermore, this court concludes that the movant would have been sentenced at the low end of the offense level had the crack amendment been in effect at that time.

Therefore, in light of these considerations and after considering the factors set forth in 18 U.S.C. § 3553(a), this court hereby finds that the concurrent sentences should be reduced to the statutory minimum term of **120 months**. In so doing, the court finds that the movant has not overserved the original sentence, and, thereby, specifically retains all options for re-sentencing the movant in the future event that he appear before this court pursuant to a petition for revocation of supervised release. The 60-months supervised release

term imposed at sentencing begins immediately upon movant's release from custody.

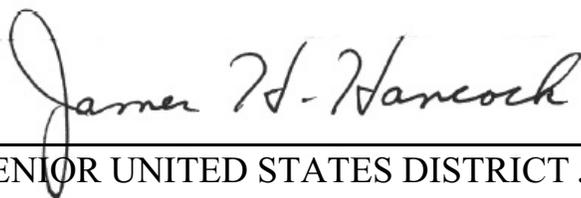
A separate order will be entered. Movant's attention is directed to the 'Notice Concerning Appeals' set out below.

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 24th day of September, 2008.



James H. Hancock

SENIOR UNITED STATES DISTRICT JUDGE