

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:23-CR-94-D-1

UNITED STATES OF AMERICA

v.

MONICA FAYE BARNES

MEMORANDUM IN SUPPORT OF MOTION
FOR SENTENCE REDUCTION PURSUANT
TO 18 U.S.C. § 3582(c)
(Amendment 821)

Monica Faye Barnes, by and through undersigned counsel, respectfully submits this memorandum of law in support of a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10(c), and U.S.S.G. Amendment 821. Ms. Barnes respectfully requests this Court reduce the sentence to eight months, effective February 1, 2024. In support thereof, Ms. Barnes states the following.

BRIEF STATEMENT OF THE CASE

On April 26, 2023, Ms. Barnes pled guilty to one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1349 and 1343. Ms. Barnes was a zero-point offender, receiving no criminal history points, which corresponded to a Criminal History Category I. Ms. Barnes's total offense level, after all enhancements and reductions, was 13 which, combined with Criminal History Category I, resulted in a guideline imprisonment range of 12 to 18 months. On July 28, 2023, Ms. Barnes was sentenced to the custody of the Bureau of Prisons for 12 months and 1 day.

On November 1, 2023, Amendment 821 to the U.S. Sentencing Guidelines was enacted.¹ Part A modified "status points" by (a) eliminating status points for individuals with six or less criminal history points and (b) decreasing status points by one point for individuals with seven or

¹ See U.S.S.G. App. C, Amendment 821. The effective date of the amendment is February 1, 2024. *Id.*

more criminal history points.² Part B addressed “zero-point” offenders (those with no criminal history points) and provided a decrease of two offense levels for these individuals.³ Application of Amendment 821 would result in the lowering of Ms. Barnes’s offense level by two points, for a total offense level 11, which when combined with Criminal History Category I, results in a reduced sentencing guideline range of 8 to 14 months.

This Court has the discretion under § 3582(c)(2) and § 1B1.10 to determine whether, and to what extent, to reduce Ms. Barnes’s sentence. As shown below, both the Sentencing Commission’s policy rationales for adopting this Amendment and the particularized § 3553(a) factors applicable to Ms. Barnes—including a positive post-sentencing record, impeccable disciplinary record, and request for a modest reduction—argue in favor of granting a reduction in this case.

MEMORANDUM OF LAW

The U.S. Code provides that where a defendant who was sentenced to an imprisonment term “based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” files his own motion seeking a sentence reduction, “the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.”⁴ The Guidelines policy statement implementing this statutory provision is found in U.S.S.G. § 1B1.10. This section of the Guidelines lists amendments that are covered by the policy statement, one of which is Amendment 821.⁵

² *Id.*

³ *Id.* Additionally, this amendment is fully retroactive, effective November 1, 2023, pursuant to the terms of 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10.

⁴ 18 U.S.C. § 3582(c)(2).

⁵ *See* U.S.S.G. App. C, Amendment 821.

The changes in Amendment 821 to status points and to zero-point offenders was motivated by multiyear recidivism studies from 2016 to 2022.⁶ With respect to status points, while “an offender’s criminal history calculation under the guidelines is strongly associated with likelihood of future recidivism,” the Commission found “status points add little to the overall predictive value associated with the criminal history score.”⁷ This research suggested to the Commission that status points do not improve the “predictive value of the criminal history score” as the Commission originally expected, warranting modification.⁸ Further, the Commission found status points may also be double counted because of revocations of probation or supervised release.⁹ In sum, Commission “concluded that accounting for status on a more limited basis continues to serve the broader purposes of sentencing while also addressing other concerns raised regarding the impact of status points.”¹⁰ With respect to zero-point offenders, the Commission’s recidivism data showed “offenders with zero criminal history points have considerably lower recidivism rates than other offenders, including offenders with one criminal history point.”¹¹ Importantly, the Commission’s “report concluded that ‘zero-point offenders’ were less likely to be rearrested than ‘one point’ offenders (26.8% compared to 42.3%), the largest variation of any comparison of offenders within

⁶ See e.g. U.S. Sentencing Commission, *Report at a Glance: Recidivism and Federal Sentencing Policy*, <https://www.ussc.gov/research/research-reports/report-glance-recidivism-and-federal-sentencing-policy>; U.S. Sentencing Commission, *2023 Amendments in Brief*, https://www.ussc.gov/sites/default/files/pdf/amendment-process/amendments-in-brief/AIB_821R.pdf; and U.S. Sentencing Commission, *Recidivism of Federal Offenders Released in 2010* (2021), available at: <https://www.ussc.gov/research/research-reports/recidivism-federaloffenders-released-2010>.

⁷ See U.S. Sentencing Commission, *Amendments to the Sentencing Guidelines, Policy Statements, Official Commentary, and Statutory Index*, Nov. 1, 2023, at p. 50-51, available at: https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf.

⁸ *Id.* at p. 51.

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. Sentencing Commission, *Recidivism of Federal Offenders Released in 2010* (2021), available at: <https://www.ussc.gov/research/research-reports/recidivism-federaloffenders-released-2010>.

the same Criminal History Category.”¹² Moreover, the Commission considered departure and variance rates for individuals with zero criminal history points and one criminal history point, finding in fiscal year 2021, 39.2% of zero point offenders and 47.7% of one point offenders were sentenced within the guidelines range.¹³ After concluding recidivism data and departure/variance rates warranted action in the form of a two-point base offense level reduction, the Commission also “identified circumstances in which zero-point offenders are appropriately excluded from eligibility in light of the seriousness of the instant offense of conviction or the existence of aggravating factors,” leading to certain exclusionary criteria.¹⁴ In sum, “[t]hese targeted amendments balance the Commission’s mission of implementing data-driven sentencing policies with its duty to craft penalties that reflect the statutory purposes of sentencing.”¹⁵

The § 3553(a) factors, lack of public safety considerations, and positive post-sentencing conduct warrant a reduction under Amendment 821.

Ms. Barnes is eligible for relief under Amendment 821, and examination of the § 3553(a) factors, public safety considerations, and post-sentencing conduct demonstrate that a reduction is warranted in this case.

A. The 18 U.S.C. § 3553(a) factors favor a sentence reduction.

First, a reduction is warranted under § 3553(a)(1) - the nature and circumstances of the offense and the history and characteristics of the defendant. Ms. Barnes pled guilty to a very serious offense but accepted full responsibility for her actions at the time of the guilty plea and again at sentencing. While Ms. Barnes’s conduct rightly merited punishment, the appropriate punishment

¹² See U.S. Sentencing Commission, *Amendments to the Sentencing Guidelines, Policy Statements, Official Commentary, and Statutory Index*, Nov. 1, 2023, at p. 52, available at: https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf.

¹³ *Id.*

¹⁴ *Id.* at p. 53.

¹⁵ *Id.* at p. 50.

is set forth under the reduced sentencing range applicable to the offense. Despite only have been in custody since September 27, 2023, Ms. Barnes has completed several education courses (basic finance, types of release, and USPO workshop) and is presently taking additional courses (Circle of Strength) and is on the waiting list for more (including assert yourself, growth mind, and the resolve workshop). *See Exhibit 1* – Individualized Needs Plan Packet;¹⁶ *see also Exhibit 2*– SENTRY Report (Sealed), at p. 6-7, 14. Ms. Barnes also maintains a work assignment in Camp Food Service. *Exhibit 1*. This employment has helped Ms. Barnes make payments towards her financial obligations. *Exhibit 1* and *Exhibit 2* at p. 13.

Second, a reduction is warranted under § 3553(a)(2) – the need to reflect the seriousness of the offense, afford adequate deterrence, and protect the public. The reduction available to, and being sought by, Ms. Barnes is modest and not likely to increase the risk of recidivism or endanger the public. *See supra*, p. 3, fn. 6. Studies on deterrence have concluded that it is the certainty, rather than the severity, of punishment that serves as a deterrent.¹⁷

B. A sentence reduction in this matter will not jeopardize public safety.

Reducing Ms. Barnes’s sentence will not increase the risk to public safety. *See* 18 U.S.C. § 3553(a)(2)(C). Ms. Barnes is classified as minimum security level and a minimum risk recidivism level. *See Exhibit 1*, at p. 3; *Exhibit 2*, at p. 2, 5. Importantly, Ms. Barnes has no infractions, indicating respect for the law and ability to integrate into society as a law-abiding citizen. *Exhibit 1, 2*.

¹⁶ Although Ms. Barnes’s Individualized Needs plan notes she was initially enrolled in GED coursework, after her education level was confirmed (she has her high school diploma and a Bachelor’s Degree), her paperwork was adjusted to so reflect. *See also* SENTRY Report (Sealed), at p. 4.

¹⁷ Valerie Wright, *Sentencing Project, Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment* 8 (2010). *See also* Steven N. Durlauf & Daniel S. Negin, *Imprisonment and Crime: Can Both be Reduced?* 10 *Criminology & Pub. Pol’y* 13, 37 (2011).

Further, two studies from 2014 and 2020 by the U.S. Sentencing Commission confirm Ms. Barnes is no more likely to recidivate if granted a modest sentence reduction.¹⁸ The Commission study from 2014 found that “there is no evidence that offenders whose sentence lengths were reduced pursuant to retroactive application of the 2007 Crack Cocaine Amendment had higher recidivism rates than a comparison group of crack cocaine offenders who were released before the effective date of the 2007 Crack Cocaine Amendment and who served their full prison terms less earned credits.”¹⁹ The 2020 study similarly found, “There was no statistically significant difference in the recidivism rates of the Retroactivity Group (offenders who were released on average 37 months early through retroactive application of the Drugs Minus Two Amendment) and the Comparison Group (offenders who would have been eligible for retroactivity but had served their sentences before retroactivity took effect).”²⁰

C. Post-sentencing conduct favors a sentence reduction.

Finally, the U.S. Sentencing Commission and the U.S. Supreme Court expect courts to consider post-sentencing conduct during resentencings.²¹ In its acknowledgment form the government suggests that Ms. Barnes’ sentence should remain unchanged. However, this Court is required to consider public safety considerations and may consider post-sentencing conduct in

¹⁸ See e.g. U.S. Sentencing Commission, *Retroactivity & Recidivism: The Drugs Minus Two Amendment*, July 8, 2020, available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf (last visited 11/9/2023); and U.S. Sentencing Commission, *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment*, May 2014, at pp. 1-2, available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf (last visited 11/9/2023).

¹⁹ U.S. Sentencing Commission, *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment* (May 2014), at pp. 1-2.

²⁰ U.S. Sentencing Commission, *Retroactivity & Recidivism: The Drugs Minus Two Amendment*, July 8, 2020, available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf (last visited 11/9/2023).

²¹ See U.S.S.G. § 1B1.10, comment. (n. 1(B)(iii)) and *Pepper v. United States*, 562 U.S. 476, 491 (2010) (“evidence of postsentencing rehabilitation may be highly relevant to several of the §3553(e) factors that Congress has expressly instructed district courts to consider at sentencing”).

considering sentence reductions, despite this court's having imposed an alternative variance at sentencing. *See* 1B1.10, comment, (n. 1(B)(ii)-(iii)). Moreover, there is nothing in Ms. Barnes' post-sentencing history to suggest a sentence at the higher end of the revised guidelines range is warranted when this Court imposed a sentence below the original advisory guidelines range. As previously stated, while incarcerated, Ms. Barnes has taken advantage of educational courses and programs offered by the Bureau of Prisons, she has maintained employment, she has followed all institutional rules, and is making payments towards her financial obligations. *See Exhibits 1, 2.*

CONCLUSION

For all the foregoing reasons, it is respectfully requested that the Court grant the motion for reduction of sentence and reduce Ms. Barnes's sentence to eight months' custody.

Respectfully requested this the 12th day of December, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

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by electronically filing the foregoing with the Clerk of Court on December 12, 2023, using the CM/ECF system which will send notification of such filing to the above and/or by email.

This the 12th day of December, 2023.

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