

Stephen R. Sady, OSB #81099
Chief Deputy Federal Defender
101 SW Main Street, Suite 1700
Portland, OR 97204
Tel: (503) 326-2123
Fax: (503) 326-5524
Email: Steve_Sady@fd.org

Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

CR No. XXXXXXXXXX

Plaintiff,

**MOTION TO TERMINATE
SUPERVISED RELEASE PURSUANT
TO 18 U.S.C. § 3583(e)**

vs.

XXXXXXXXXXXXXXXXXXXX,

Defendant.

The defendant, through his attorney, **Stephen R. Sady**, respectfully moves the Court for an order pursuant to 18 U.S.C. § 3583(e) terminating supervised release on the grounds that, pursuant to Application Note 5 to U.S.S.G. §1B1.10, he would have benefitted from the

retroactive crack guideline amendment. [State position of government and probation office if known].

Mr. XXX received a sentence to XX months incarceration upon being found guilty on a plea of guilty to conspiracy to distribute cocaine base. His sentence was based on the Drug Quantity Table that has, according to the United States Sentencing Commission, overrepresented the severity of the offense ever since the guideline was promulgated. The Court imposed sentence below the guidelines at total offense level XX for a sentencing guideline range of __-__ months. With an additional two level reduction, the sentencing guideline range would have been __-__. Mr. XXX began his term of supervised release on _____, 200_, and has been under the supervision of the probation office since that time, almost ___ years.

As noted in the amendment to the retroactivity guideline that was promulgated by the Sentencing Commission, the Court does not have the authority to reduce the __ month sentence beyond the sentence currently imposed and already served. U.S.S.G. §1B1.10(b). However, the commentary specifically notes that over-incarceration can be addressed through modification or termination of the supervised release term. U.S.S.G. §1B1.10, comment. (n.5). The Supreme Court in *United States v. Johnson*, 529 U.S. 53, 60 (2000), noted that “equitable considerations of great weight” militate in favor of reduction of the term of supervised release to account for over-incarceration. *See also United States v. Montenegro-Rojo*, 908 F.2d 2125, 431 N.8 (9th Cir. 1990) (“If the district court decides to shorten the

extent of its [upward] departure, the extra time Montenegro-Rojo spent in jail should, in fairness, be counted towards the year of supervised release.”).

In the present case, the over-incarceration is sufficient for recognition under Application Note 5. Although Mr. XXXXX will not be able to salvage the time he would have been eligible for, the Court can provide a partial remedy by freeing him from the restrictions of supervised release. The “interests of justice” that support this request include not only his over-incarceration but his compliance with the terms of his supervised release for almost ___ years and his very good conduct in the community. Even apart from crack retroactivity, Mr. _____ has no violations in almost ___ years, [if applicable, then add all other factors favoring early termination].

For the foregoing reasons, we respectfully request that the Court enter an order terminating Mr. XXXXX’s supervised release.

Respectfully submitted this 11th day of April, 2008.

/s/ Stephen R. Sady
Stephen R. Sady
Attorney for Petitioner