

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

UNITED STATES OF AMERICA

: No. [REDACTED]

v.

:
:
:

[REDACTED] :

MOTION TO CORRECT SENTENCE

NOW COMES the defendant, by and through legal counsel, and moves this Honorable Court pursuant to Rule 35(c) of the Federal Rules of Criminal Procedure for an order correcting the sentence imposed in this matter at a hearing on May 20, 1993, and in support of this motion shows unto the court the following:

1. The offense conduct for which the defendant was originally sentenced occurred in 1989.

2. The defendant was originally sentenced in 1989, but was resentenced on July 28, 1992 to three and one-half (3 1/2) years in the custody of the Bureau of Prisons, followed by three (3) years supervised release.

3. At the hearing held on May 20, 1993, the court, upon finding that defendant violated the terms of his supervised release, used and relied upon the guidelines set forth in Chapter 7, specifically 7B1.4 of the United States Sentencing Commission Guidelines Manual, to determine the sentence to be imposed.

4. Chapter 7 of the Sentencing Guidelines was not effective until November 1, 1990, and applying the guidelines to defendant's case

would be an ex post facto application.

5. That application of said guidelines in this case was clear error.

WHEREFORE, defendant requests that the judgment and sentence imposed as a result of the hearing on May 20, 1993 in this matter be stricken and that a new hearing be held in this matter.

This the 27th day of May, 1993.

GREGORY DAVIS
Assistant Federal Public Defender
NCSB [REDACTED]
P.O. Box 400
Greensboro, North Carolina 27402
(919) 333-5455

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served upon Richard Glaser, Jr., Assistant United States Attorney for the Middle District of North Carolina, 324 West Market Street, Greensboro, North Carolina 27401 by hand delivering a copy of the same.

This the _____ day of _____, 1993.

GREGORY DAVIS
Attorney for Defendant
NCSB #7082