

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

**United States of America,**

**Plaintiff,**

**v.**

**Case No. 04-20006-01-JWL**

**Alvarez McCullough,**

**Defendant.**

**MEMORANDUM & ORDER**

This matter is before the court on Mr. McCullough's pro se motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) in which Mr. McCullough asks the court to reduce his sentence based on Amendment 782 to the United States Sentencing Guidelines which took effect on November 1, 2014 and lowers the base offense levels in the Drug Quantity Table. On July 18, 2014, the United States Sentencing Commission voted to apply the amendment retroactively to those offenders currently in prison, but with a requirement that the reduced sentences cannot take effect until November 1, 2015.

The Honorable J. Thomas Marten of the District of Kansas has appointed the Office of the Federal Public Defender to represent any defendant previously determined to have been entitled to appointment of counsel, or who is now indigent, to determine whether that defendant may qualify for relief under Amendment 782. The record reflects that Mr. McCullough has previously been represented by retained counsel and it is unclear from the record whether his financial circumstances have changed such that he is now indigent and would be entitled to have the Federal Public Defender represent him in connection with his request for relief under

Amendment 782. The court believes that the most efficient way to resolve the issue raised by Mr. McCullough is to forward Mr. McCullough's motion (along with a copy of this order) to the Office of the Federal Public Defender for a determination of whether Mr. McCullough qualifies for representation. In that regard, the court anticipates that the Federal Public Defender will send to Mr. McCullough a financial affidavit for Mr. McCullough to complete and return to the Federal Public Defender. If Mr. McCullough is entitled to representation by the Federal Public Defender, that office will determine in the first instance whether Mr. McCullough is entitled to relief under Amendment 782 and will seek such relief if Mr. McCullough is eligible. If the Federal Public Defender determines that Mr. McCullough is not entitled to representation by the Federal Public Defender, or if the Federal Public Defender otherwise declines to seek relief for Mr. McCullough under Amendment 782, Mr. McCullough may refile his motion on or after February 2, 2015.

**IT IS THEREFORE ORDERED BY THE COURT THAT** Mr. McCullough's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) (doc. 268) is denied without prejudice to refiling on or after February 2, 2015.

**IT IS FURTHER ORDERED BY THE COURT THAT** the Clerk of the Court shall forward to the Office of the Federal Public Defender a copy of this order along with a copy of Mr. McCullough's pro se motion for reduction of sentence.

**IT IS SO ORDERED.**

Dated this 3<sup>rd</sup> day of December, 2014, at Kansas City, Kansas.

s/ John W. Lungstrum

John W. Lungstrum

United States District Judge