

## DO IT YOURSELF FIRST STEP ACT MOTIONS

- I. Getting Started
  - A. You'll need the PSR and, if there is one, the probation memo (and there probably is).
  - B. Check and see if we already have opened a file
  - C. Arrange for a phone call to client
    - a. Ask about health and other relevant info. Ask about possibility of letters. Progress report.<sup>1</sup> Good idea to send a letter.
- II. Motion format: *See* Frank Sharpe motion
  - A. Short introductory paragraph.
  - B. Second paragraph
    - a. Length of sentence, age and year when sentenced, length of time served, projected release date, any positives
  - C. History, including initial guideline calculations
  - D. Current guidelines and mandatory minimum
  - E. Eligibility argument
  - F. Reason why reduced sentence would be sufficient
- III. Arguments for a Reduced Sentence
  - A. *United States v. Hegwood*, 934 F.3d 414 (5th Cir. 2019)
    - a. Ignore it.
    - b. In some cases, you can ask the court to apply the sentencing guideline amendments as Judge Rodgers did in *United States v. Lavar Hills*, No. 5:04cr23-MCR (N.D. Fla.).
    - c. Argue *Hegwood* is wrongly decided or that even if right, the better course is to impose a variance. *See* Lavar Hills motion.<sup>2</sup>
  - B. Rely on 3553(a) factors – especially if not considered at initial sentencing. *See* 3553(a) *FACTORS*.<sup>3</sup>
    - a. Post-Sentence conduct. *See* 3553(a) Factors; Frank Sharpe motion.

---

<sup>1</sup> <https://infoweb.ao.dcn/bopdir.fwx?mode=searchform>

<sup>2</sup> Summaries of all my motions are at: P\Murrell\First Step Act\ RPM Motion Summary

<sup>3</sup> This and similar references are to a list of my cases organized by categories such as, in this instance “3553(a) Factors.” The list is at P\Murrell\First Step Act\ Case Summaries in Categories

- C. Argue client would not qualify for the 851 enhancement if sentenced today or, in the case of 851(b)(1)(A) that the maximum penalty has been reduced. *See 851 ENHANCEMENT*
- D. Argue that today client no longer qualifies for career offender sentencing or that there are reasons to sentence below the career offender guideline range. *See CAREER OFFENDER*
  - a. The residual clause has been deleted and burglary no longer counts
  - b. Today courts vary downward 75% of the time in cases involving the career offender guideline. Sentencing Commission recognized shortcomings of the provision, as does Judge Hinkle.
  - c. Increasing disparity between career offender guideline range and range for crack offenses. *See GUIDELINE CHANGES*
- E. Argue purpose of the Fair Sentencing Act and draconian nature of a life sentence. *See GENERAL OBSERVATIONS*
- F. Changes in criminal history calculations might make a small difference
  - a. Recency points. *See GUIDELINE CHANGES*
  - b. Changes in same-day-sentencing calculations. *See GUIDELINE CHANGES*