



reduction, because his sentence was not determined by the guidelines, but rather by the mandatory minimum as affected by the government's motion. Stated otherwise, the effective guideline minimum at the original sentencing was 60-71 months, and that guideline has not been lowered. While this is certainly a plausible argument, it overlooks the fact that the government's motion permitted the Court to impose a sentence below the mandatory minimum, hence the mandatory minimum no longer constituted the bottom of the guideline range. Thus, the only guideline range in effect at the time of the original sentencing was the 57-71 month range, which has indeed been reduced to 46-57 months.

Of particular importance, I believe, is that, in determining how much of a reduction below the mandatory minimum should be granted, the Court necessarily took into account, among other factors, the actual guideline range which would have been applicable but for the mandatory minimum. Thus, Mr. Hedgebeth's actual sentence of 48 months was, at least to some extent, influenced by, and therefore "based [in part] on a sentencing range that has been subsequently lowered" within the meaning of § 3582(c)(2).

While the issue is not free from doubt, I conclude that the defendant is entitled to the benefit of the doubt.

The parties agree that, consistent with the recommendations of the Sentencing Commission concerning the appropriate way to calculate reductions under the new guidelines for crack cocaine, if Mr. Hedgebeth is found eligible for the reduction, the appropriate sentence would be 39 months. An Order to that effect follows.

