

001-94

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TENNESSEE

PROBATION OFFICE

JIM MCKINLEY
CHIEF PROBATION OFFICER

December 31, 1993

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FEDERAL BUILDING
187 N. MID-AMERICA MALL
MEMPHIS, TN 38103
901-344-3255

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Attention: Public Information Officer
Re: Proposed Amendments

Dear Commissioners:

I am writing to call to the Commission's attention a sentencing issue which, I believe, needs addressing at the next amendment cycle.

Guideline 4A1.2, comment.(n.3), defines "related cases" by stating, in part, that these are cases "consolidated for trial or sentencing." Within the last year, our Court has been receiving with ever increasing frequency from defense counsel nunc pro tun orders signed by state criminal court judges which consolidate cases retroactively that were disposed of years and years ago. The sole purpose has been to defeat the more onerous sentencing provisions of Guideline 4B1.1 "Career Offender."

For example, the enclosed "Order of Consolidation" signed Oct. 12, 1992, consolidates nunc pro tun three felony convictions disposed of in 1989 (the digits "89" in the masthead of the order indicate the year of filing). While none of our judges has honored any of these retroactive orders, it has been a very, very close call on one or two.

To alleviate this problem of violent, repeat offenders escaping the provisions of 4B1.1, I propose that the Commission add a provision to 4A1.2, comment. (n.3), to the effect that "prior sentences are considered/related if they resulted from offenses that were consolidated for trial or sentencing at the time of said trial or sentencing."

I am certain that this practice of securing nunc pro tun orders consolidating long-ago-disposed-of convictions will spread like the Beijing flu, incapacitating the "Career Offender" provision. For that reason, I am requesting that the Commission set some sort of time frame for the consolidation of cases under 4A1.2, comment.(n.3).

Cordially,

Harry J. Jaffe
Harry J. Jaffe
Deputy Chief

IN THE CRIMINAL COURT OF SHELBY COUNTY TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

STATE OF TENNESSEE

vs.

NO. 89-04020
89-08148-49

FREDDIE HOWARD,

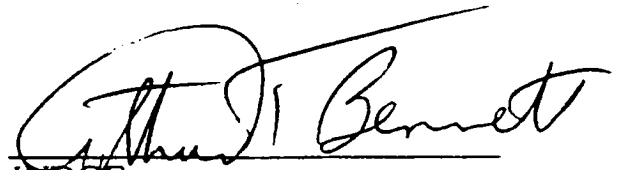
Defendant

ORDER OF CONSOLIDATION

This cause came on to be heard on the 12 day of October, 1992
upon the motion of the defendant, Freddie Howard. Upon good cause shown and for
clarification of the record, the Court finds the following:

1) That the criminal offenses attempted felony in no. 89-04020; theft under
\$10,000.00 in no. 89-08148; and violation of T.C.A. 55-5-113 in no. 89-08149 were
consolidated for the purpose of sentencing in order that the defendant could receive
concurrent time.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that case nos.
89-04020, 89-08148-49 were consolidated for sentencing on the 7 day of
November, ¹⁹⁸⁹1992, in order for the defendant, Freddie Howard, to receive concurrent
time, and the records should reflect such consolidation.


JUDGE *re: Pro. Turn Cl*