

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch**

UNITED STATES OF AMERICA	:	
	:	Case No. _____
v.	:	Judge _____
	:	Closed Case
_____	:	

MOTION FOR APPOINTMENT OF COUNSEL

The undersigned, pro se, respectfully submits the following motion for the appointment of counsel to represent the undersigned for purposes of a sentence modification motion and hearing pursuant to the Incarceration Reduction Amendment Act (IRAA) of 2016, D.C. Code § 24-403.03. Under IRAA, a person who has served 20 years in prison or more for a crime that occurred when the person was less than 18 years old, and who is not yet eligible for parole, is eligible to file a sentence modification motion and have a new sentencing hearing where mandatory minimums do not apply. The undersigned meets (or will soon meet) IRAA’s basic eligibility requirements and moves this Court to appoint an attorney to represent the undersigned for purposes of pursuing relief under IRAA. In support of this motion the undersigned states the following:

STATEMENT OF FACTS

1. The undersigned’s date of birth is _____.

2. In this case, the undersigned was convicted of a crime that occurred on this date:_____ (date of offense). Therefore, the undersigned was under 18 years old at the time of the conduct for which the undersigned was convicted.
3. The undersigned has served _____ years in prison.
4. The undersigned is not yet eligible for parole.
5. The undersigned is currently incarcerated at _____.
6. The undersigned does not have the means to retain an attorney to represent the undersigned in this case.

STATEMENT OF LAW

The Comprehensive Youth Justice Amendment Act of 2016 went into effect on April 4, 2017. Title III of the bill is the Incarceration Reduction Amendment Act of 2016. D.C. Law 21-238. IRAA was passed “to eliminate mandatory minimums for juveniles charged as adults...and to allow for sentence review for individuals who have served 20 years or more in prison for crimes committed as juveniles.” *Id.* Under IRAA defendants who 1) were under 18 years old at the time of the offense, 2) have been incarcerated for 20 years or more, and 3) are not yet eligible for parole (if serving an indeterminate sentence) may file a motion for modification of sentence with the sentencing court. D.C. Code § 24-403.03.

Once an eligible defendant has filed a sentence reduction motion pursuant to IRAA, the Court must hold a hearing on that motion and the defendant’s sentence may be reduced. D.C. Code § 24-403.03(b)(2). Mandatory minimum sentences do not apply at the new sentencing hearing: the sentence may be reduced “notwithstanding any other provision of law.” D.C. Code § 24-403.03(a); *see also* D.C. Code § 24-403.01(c)(2) (“Notwithstanding any other provision of law, if the person committed the offense for which he or she is being sentenced...while under 18

years of age...[t]he court may issue a sentence less than the minimum term otherwise required by law[.]”)

In ruling on the motion, the Court must consider certain specific factors, including: the defendant’s age at the time of the offense; the “history and characteristics” of the defendant; whether the defendant has completed “any educational, vocational, or other program” in prison; any “physical, mental, or psychiatric examinations” of the defendant; the defendant’s “family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;” and the “diminished culpability of juveniles as compared to adults.” D.C. Code § 24-403.03(c).

IRAA effectively creates a right for eligible defendants to have a new sentencing hearing where mandatory minimums do not apply and where specific factors must be considered.

Because it is a new sentencing hearing, the 6th Amendment right to counsel applies.

Furthermore, IRAA anticipates that defendants will be represented in these proceedings: the statute requires that defendant’s counsel be “given the opportunity to speak” at the hearing.¹

In the alternative, if IRAA motions and hearings are viewed as a post-trial process rather than a new sentencing hearing, counsel is required under the Due Process Clause because IRAA *requires* courts to review eligible cases on the merits. *See Douglas v. California*, 372 U.S. 353, 356-57 (1963) (where state law provides *mandatory* appellate review, merits of only appeal as of right cannot be decided without presence of counsel). The mandatory nature of sentence modification hearings under IRAA make them unlike Rule 35 motions for Due Process purposes. Rule 35 proceedings are discretionary, and therefore there is no automatic right to counsel.

¹ At the hearing on the motion “the defendant *and the defendant’s counsel* shall be given an opportunity to speak on the defendant’s behalf.” D.C. Code § 24-403.03(b)(2) (emphasis added).

United States v. Hamid, 461 A.2d 1043, 1044 (D.C. 1983). Sentence modification hearings under IRAA, however, *must* be held upon the eligible defendant’s motion and the motion must be resolved on the merits. It is the mandatory nature of the sentence modification hearings that render them analogous to direct appeal proceedings for Due Process right-to-counsel purposes.²

CONCLUSION

The undersigned is eligible (or will soon be eligible) to file a motion under D.C. Code § 24-403.03 and have counsel speak on the undersigned’s behalf at the hearing. Because the undersigned is constitutionally entitled to representation for purposes of re-sentencing under IRAA, and because the undersigned does not have the means to retain private counsel, the undersigned respectfully moves this Court to appoint counsel for the undersigned for the purposes of re-sentencing under D.C. Code § 24-403.03.³

Respectfully submitted,

Signature: _____
Name (printed): _____
Fed. Reg. #: _____
Address: _____

² Even if sentence modification hearings under D.C. Code § 24-403.03 were viewed as analogous to Rule 35 proceedings, DCCA precedent instructs trial courts to appoint counsel for Rule 35 proceedings where the issues raised require counsel for fundamental fairness. *Burrell v. United States*, 332 A.2d 344, 347 (D.C. 1975). Given the specific factors that must be considered in the IRAA sentence modification hearings, the resources needed to present information on these factors, and the anticipation in IRAA that counsel will speak at the hearing, it would be fundamentally unfair to force indigent, incarcerated defendants to proceed under IRAA without the assistance of counsel.

³ Undersigned is incarcerated and has limited access to resources such as copiers and paper. Undersigned requests that this Court serve a copy of this motion on the Special Proceedings Division of the United States Attorney’s Office for the District of Columbia, 555 Fourth Street, N.W., Washington, D.C. 20530.