EASTERN DISTRICT COURT EASTERN DISTRICT OF NEW YORK	
X UNITED STATES,	
-against-	MEMOD ANDUM OF
DONOVAN SHOUDER	MEMORANDUM OF DECISION AND ORDER 07-CR-287 (ADS)
DONOVAN SHOUDER,	
-against-	10-CV-1388 (ADS)
UNITED STATES.	

APPEARANCES:

Loretta A. Lynch, United States Attorney for the Eastern District of New York Attorneys for the United States

610 Federal Plaza Central Islip, NY 11722

By: John J. Durham, Assistant United States Attorney

Gary Schoer, Esq.

Attorney for Donovan Shouder 6800 Jericho Turnpike Syosset, NY 11791

SPATT, District Judge.

Presently before the Court are two motions filed by the defendant Donovan Shouder in the above-captioned cases.

On January 7, 2011, Shouder filed a motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). To date, the Government has not opposed or otherwise responded to this motion. As a result, the Court hereby sets this matter down for re-sentencing on December 2, 2011 at 11:30am. The United States Department of Probation is requested to obtain all records regarding the Defendant's

behavior during his current term of incarceration and produce all such records to this Court on or

before November 16, 2011.

Prior to filing the motion for a sentence reduction, on March 25, 2010, Shouder filed a habeas

petition pursuant to 28 U.S.C. § 2255 seeking to vacate, set aside, or correct his sentence on the

grounds that: (1) counsel was ineffective in failing to advise the Court of its ability to depart from the

crack/powder ratio in sentencing based on policy disagreements with the ratio and (2) Shouder did not

knowingly and voluntarily waive his right to appeal because he was not informed about possible

sentencing reductions for crack offenses. In light of the fact that the Court is granting Shouder's

motion for a re-sentencing based on the sentencing criteria for crack offenses, the Court denies

Shouder's habeas petition as moot. The Clerk of the Court is directed to close the civil case.

SO ORDERED.

Dated: Central Islip, New York

October 3, 2011

/s/ Arthur D. Spatt

ARTHUR D. SPATT

United States District Judge