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In the
United States Court of Appeals
For the Second Circuit

AUGUST TERM 2021

ARGUED: FEBRUARY 24, 2022
DECIDED: NOVEMBER 17, 2022

Nos. 21-151(L), 21-167 (Con)

UNITED STATES OF AMERICA,
Appellee,

v.

AZIZJON RAKHMATOV,
Defendant-Appellant,

ABDURASUL HASANOVICH JURABOEV, AKA ABDULLOH IBN HASAN,
AKHROR SAIDAKHMETOV, ABROR HABIBOV, DILKHAYOT KASIMOV,
AKMAL ZAKIROV,
Defendants.

Appeal from the United States District Court
for the Eastern District of New York.

Before: LIVINGSTON, *Chief Judge*, KEARSE and WALKER, *Circuit Judges*.

In these appeals, Azizjon Rakhmatov challenges the sentence imposed following his guilty plea for conspiring to support a terrorist

1 group (No. 21-151) and the denial of his Federal Rule of Criminal
2 Procedure 35(a) motion to correct the sentence (No. 21-167). In this
3 opinion, we address whether the Rule 35(a) motion is barred by the
4 appeal waiver in his plea agreement. Rakhmatov argues that the
5 district court erred in denying his motion to correct its alleged
6 sentencing errors. We disagree, and **DISMISS** the appeal in No. 21-
7 167. We address Rakhmatov's remaining arguments in a summary
8 order filed concurrently with this opinion.

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District of New York, Brooklyn, New York, *for*
Appellee United States of America.

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JOHN M. WALKER, JR., *Circuit Judge:*

In these appeals, Azizjon Rakhmatov challenges the sentence
imposed following his guilty plea for conspiring to support a terrorist
group (No. 21-151) and the denial of his Federal Rule of Criminal
Procedure 35(a) motion to correct the sentence (No. 21-167). In this
opinion, we address whether the Rule 35(a) motion is barred by the
appeal waiver in his plea agreement. Rakhmatov argues that the
district court erred in denying his motion to correct its alleged
sentencing errors. We disagree, and **DISMISS** the appeal in No. 21-
167. We address Rakhmatov's remaining arguments in a summary
order filed concurrently with this opinion.

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BACKGROUND

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In 2019, Appellant Rakhmatov pleaded guilty in the Eastern District of New York (Kuntz, *J.*) to conspiring to provide material support to the terrorist group ISIS in violation of 18 U.S.C. § 2339B. He pleaded pursuant to a plea agreement in which he agreed not to “file an appeal or otherwise challenge” his sentence so long as he was sentenced to 150 months or less of imprisonment.¹ We will refer to this provision in the plea agreement as the “appeal waiver.”

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In January 2021, the district court sentenced Rakhmatov to 150 months’ imprisonment and lifetime supervised release, accompanied by several special conditions. Three days later, Rakhmatov filed a letter objecting to his term of imprisonment. He urged the district court to “correct the sentence” or resentence him within 14 days, citing Federal Rule of Criminal Procedure 35(a).² The district court “denied” the motion. Rakhmatov then appealed his sentence (No. 21-151) and the denial of his Rule 35(a) motion (No. 21-167).

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On appeal, a motions panel of this court granted in part the government’s motion to dismiss, holding that Rakhmatov’s appeal of his term of imprisonment was barred by his plea agreement. The panel permitted the challenge to proceed, however, as to his supervised release, the special conditions, and the district court’s denial of his Rule 35(a) motion, on the basis that they were not covered by the appeal waiver.

¹ App. 151.

² *Id.* at 444. Rule 35(a) states that “[w]ithin 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.”

1 redressable through Rule 35(a). Consistent with the district court and
2 the litigants on appeal, we treat Rakhmatov’s post-sentencing letter
3 as a Rule 35(a) motion. Therefore, we must decide whether the appeal
4 waiver prohibits his Rule 35(a) motion.

5 Rule 35(a) allows the district court to correct a sentence that
6 contains an “arithmetical, technical, or other clear error.”⁸ We have
7 repeatedly stated, quoting the rule’s advisory committee notes, that it
8 “is intended to be very narrow and to extend only to those cases in
9 which an obvious error or mistake has occurred in the sentence.”⁹ It
10 is not “meant to allow the district court to reopen issues previously
11 resolved at the sentencing hearing through the exercise of the court’s
12 discretion with regard to the application of the sentencing guidelines,
13 or to reconsider the application or interpretation of the sentencing
14 guidelines.”¹⁰ District courts have invoked Rule 35(a) to, for example,
15 correct a restitution award that was initially calculated incorrectly.¹¹
16 On the other hand, disputes about the application of the sentencing
17 guidelines fall “outside the very narrow scope of the rule.”¹²

18 In this case, Rakhmatov’s motion did not identify any
19 arithmetical, technical, or similar errors with the sentence. Instead,
20 he alleged that the district court failed to properly apply the
21 sentencing factors and failed to adequately consider his objections,

⁸ Fed. R. Crim. P. 35(a).

⁹ *United States v. Donoso*, 521 F.3d 144, 146 (2d Cir. 2008) (per curiam) (quoting *United States v. Abreu-Cabrera*, 64 F.3d 67, 72 (2d Cir. 1995), itself quoting Fed. R. Crim. P. 35, 1991 advisory committee’s note) (abrogated on different grounds).

¹⁰ *United States v. DeMartino*, 112 F.3d 75, 79 (2d Cir. 1997) (quotation marks omitted).

¹¹ See *United States v. Spallone*, 399 F.3d 415, 419 (2d Cir. 2005).

¹² *Califano v. United States*, 2000 WL 730398, at *2 (2d Cir. 2000).

1 resulting in a prison term that was “unreasonable, cruel and unusual,
2 . . . and greater than necessary to accomplish [its] purpose.”¹³ The
3 motion’s arguments thus plainly fall outside of Rule 35(a)’s “very
4 narrow” scope.¹⁴ Instead of filing a genuine Rule 35(a) motion,
5 Rakhmatov simply stated his objections to the district court’s
6 sentence.

7 We have not yet decided, and need not decide today, whether
8 an appeal waiver can bar a motion to correct a “technical,
9 arithmetical, or other clear error,” as specified in Rule 35(a).¹⁵ Simply
10 citing Rule 35(a), however, cannot allow a defendant to obtain
11 substantive review that would otherwise be barred by an appeal
12 waiver. If Rule 35(a) were to permit such end-runs, it would
13 functionally deprive the government of the benefit of the waiver. As
14 a result, appeal waivers “would cease to have value as a bargaining
15 chip in the hands of defendants.”¹⁶ Accordingly, we hold that when
16 a challenge to a prison sentence purportedly under Rule 35(a) does
17 not fall within the narrow scope of Rule 35(a), an appeal waiver can
18 bar consideration of the motion.

19 The terms of this appeal waiver plainly bar consideration of the
20 motion. As part of his plea agreement, Rakhmatov agreed not to “file
21 an appeal or *otherwise challenge*, by petition pursuant to 28 U.S.C.
22 § 2255 or *any other provision*, the conviction or sentence” provided he

¹³ App. 444.

¹⁴ *Donoso*, 521 F.3d at 146; see also *United States v. Escobar*, 542 F. App’x 38, 41 (2d Cir. 2013) (suggesting that arguments related to a sentence’s procedural and substantive reasonability are not appropriately raised in a Rule 35(a) motion).

¹⁵ Fed. R. Crim. P. 35(a).

¹⁶ *United States v. Arevalo*, 628 F.3d 93, 98 (2d Cir. 2010) (quotation marks omitted).

1 was sentenced to 150 months' imprisonment or less.¹⁷ The district
2 court sentenced him to 150 months in prison. Although he disagrees
3 with this sentence, he cannot use Rule 35(a) to overcome his waiver.
4 His appeal from the decision on the motion must be dismissed.¹⁸

5 Rakhmatov tries to avoid this outcome by insisting that his
6 motion falls within the parameters of Rule 35(a). This argument is
7 without merit. First, he cites precedent suggesting that the rule is
8 "broadly available" to correct unjust or unlawful sentences.¹⁹ All of
9 the cases he cites, however, are either out of circuit or analyze
10 previous versions of Rule 35 that allowed courts to correct any
11 "illegal" sentence.²⁰ As discussed, our precedent and the advisory
12 committee's comments make clear that the current Rule 35(a) is far
13 narrower in scope.

14 Next, Rakhmatov points to *United States v. Waters*, which held
15 that Rule 35(a) permitted a district court to correct a sentence when it
16 had failed to consider a Sentencing Guidelines policy statement in
17 setting its original sentence.²¹ Rakhmatov equates this to the district

¹⁷ App. 151 (emphasis added).

¹⁸ A motions panel previously declined to dismiss Rakhmatov's appeal as to this issue. In permitting the appeal to proceed, however, the panel did not discuss whether Rakhmatov had brought a valid Rule 35(a) motion. In any case, our authority to reconsider issues decided by a motions panel is well established. See, e.g., *United States v. Brown*, 623 F.3d 104, 111–12 (2d Cir. 2010); *Rezzonico v. H & R Block, Inc.*, 182 F.3d 144, 149 (2d Cir. 1999).

¹⁹ *United States v. Thompson*, 261 F.2d 809, 810 (2d Cir. 1958); see also *United States v. Braun*, 382 F. Supp. 214 (S.D.N.Y. 1974); *United States v. Himsel*, 951 F.2d 144 (7th Cir. 1991); *Benson v. United States*, 332 F.2d 288 (5th Cir. 1964); *United States v. Patrick Petroleum Corp. of Michigan*, 703 F.2d 94 (5th Cir. 1982).

²⁰ See *Himsel*, 951 F.2d at 146 (quoting the previous rule).

²¹ 84 F.3d 86, 90 (2d Cir. 1996) (per curiam).

1 court's alleged failure to properly apply the sentencing factors in his
2 case. In *Waters*, however, we emphasized that the "district court [had]
3 neglected to consider the policy statement *at all*," contrary to the law's
4 requirements, because it was unaware "of the policy statement's
5 existence."²² Indeed, the district court stated on the record that it had
6 not taken the statement into account when imposing the original
7 sentence.²³ In this case, the district court explicitly invoked and
8 applied the § 3553(a) sentencing factors when arriving at
9 Rakhmatov's sentence. Rakhmatov asserts that the district court did
10 not "actually" apply the factors,²⁴ but this amounts to an objection to
11 its analysis, not an unmistakable error as in *Waters*. Rakhmatov's
12 arguments are plainly beyond the scope of Rule 35(a) and thus are
13 barred by his appeal waiver.

14 CONCLUSION

15 For the foregoing reasons, we **DISMISS** Rakhmatov's appeal
16 from the denial of his Rule 35(a) motion (No. 21-167). We address his
17 appeal in No. 21-151 in the concurrently filed summary order.

²² *Id.* at 90–91.

²³ *Id.* at 91.

²⁴ Appellant's Brief at 53.