

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-10530
Non-Argument Calendar

D.C. Docket No. 1:99-cr-00896-JLK-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARC KENLO MONESTINE,
a.k.a. B.J.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(June 5, 2017)

Before WILLIAM PRYOR, JORDAN and ROSENBAUM, Circuit Judges.

PER CURIAM:

Marc Kenlo Monestine appeals *pro se* the denial of his motion to reduce his sentence under Amendment 750 to the Sentencing Guidelines. 18 U.S.C.

§ 3582(c)(2). The district court later granted Monestine's motion to reconsider and reaffirmed Monestine's sentence. Although we affirm the denial of Monestine's motion to reduce his sentence, we vacate the orders that granted Monestine's motion to reconsider and that reaffirmed his sentence and remand for the district court to dismiss Monestine's motion to reconsider for lack of jurisdiction.

The district court did not abuse its discretion when it denied Monestine's motion to reduce his sentence. The district court decided that Monestine was eligible for a sentence reduction after the government conceded his eligibility. But the district court denied Monestine's motion to reduce his sentence based on "the policy statement" of the Sentencing Commission, the statutory sentencing factors, and his "numerous disciplinary issues in prison." *See* 18 U.S.C. § 3553; U.S.S.G. § 1B1.10; *United States v. Smith*, 568 F.3d 923, 927 (11th Cir. 2009). As the leader of a conspiracy to distribute cocaine, Monestine obtained large quantities of cocaine by raiding homes; he bragged about shooting the occupants and burning them with hot irons; and he plotted to raid a woman's home and to kill her before he was arrested while trying to steal 65 kilograms of cocaine from an apartment. And a copy of Monestine's prison record showed that he had been disciplined eight times between 2000 and 2014, and that he had, as the district court stated, been

“sanction[ed] for fighting with another inmate and [for the] unauthorized possession of a metal rod.” The district court reasonably determined that a reduction of sentence was unwarranted based on Monestine’s history and characteristics and his post-sentencing conduct.

The district court lacked jurisdiction to grant Monestine’s motion to reconsider or to reaffirm Monestine’s sentence. A district “court may not modify a term of imprisonment once it has been imposed except . . . to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.” 18 U.S.C. § 3582(c)(1)(B). Because section 3582(c) does not include an exception for a motion to reconsider, *United States v. Phillips*, 597 F.3d 1190, 1200 (11th Cir. 2010), the district court lacked authority to reexamine Monestine’s sentence unless it could do so under Rule 35. That rule granted the district court jurisdiction to “correct a sentence that resulted from arithmetical, technical, or other clear error,” but only “[w]ithin 14 days after sentencing.” Fed. R. Crim. P. 35(a). And the denial of Monestine’s motion to reduce was a “sentencing.” *See United States v. Anderson*, 772 F.3d 662, 667 (11th Cir. 2014) (“A district court’s denial on the merits [under section 3582(c)] is still . . . a new sentence.”); *Phillips*, 597 F.3d at 1199 (“A sentencing, whether imposing the initial sentence or a subsequent different sentence, is a sentencing.”). After the district court denied Monestine’s motion to reduce his sentence, it waited 40 days to enter an order

granting Monestine's motion to reconsider and then an additional 44 days before entering its order reaffirming Monestine's sentence. Because "the district court had to act within [14] days under Rule 35(a) or not at all," *Phillips*, 597 F.3d at 1201, we vacate for lack of jurisdiction the orders that granted Monestine's motion to reconsider and that reaffirmed Monestine's sentence.

We **AFFIRM** the denial of Monestine's motion to reduce his sentence, but we **VACATE** the orders that granted Monestine's motion to reconsider and that affirmed his sentence and **REMAND** for the district court to dismiss Monestine's motion to reconsider for lack of jurisdiction.