

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-7476**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TONY ERVIN LOPEZ, a/k/a Pullulo, a/k/a Peludo,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (1:07-cr-00137-GBL-1)

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Submitted: November 21, 2013

Decided: November 26, 2013

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Before KING, DUNCAN, and DIAZ, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Tony Ervin Lopez, Appellant Pro Se. Richard Daniel Cooke, Assistant United States Attorney, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tony Ervin Lopez appeals the district court's order denying his motion to compel the Government to file a motion for sentence reduction under Fed. R. Crim. P. 35(b) and his motion for sentence reduction under that rule. We affirm.

On appeal, we confine our review to the issues raised in the Appellant's brief. See 4th Cir. R. 34(b). Because Lopez's informal brief does not challenge the district court's denial of his motion for sentence reduction, he has forfeited appellate review of that portion of the district court's order.

With respect to the district court's denial of the motion to compel, it is well-settled that whether to file a Rule 35(b) motion is a matter left to the Government's discretion. Fed. R. Crim. P. 35(b); United States v. Dixon, 998 F.2d 228, 230 (4th Cir. 1993). A court may remedy the Government's refusal to move for a sentence reduction under Rule 35(b) if: (1) the Government has obligated itself in the plea agreement to move for the reduction; or (2) the Government's refusal to move for the reduction was based on an unconstitutional motive. Wade v. United States, 504 U.S. 181, 185-86 (1992).

After review of the record, we conclude that neither circumstance is present here. The plea agreement between Lopez and the Government clearly establishes that the decision whether to file a Rule 35(b) motion rested with the Government's

discretion, and Lopez did not claim in the motion to compel that the Government's refusal to file a Rule 35(b) motion was based on an unconstitutional motive.

Accordingly, we affirm the district court's order denying Lopez's motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED