

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 10-1186

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United States of America,	*	
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Plaintiff - Appellee,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	District of Nebraska.
Brandon Lamarr Smith-Cushingberry,	*	
	*	[UNPUBLISHED]
Defendant - Appellant.	*	

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Submitted: June 14, 2010

Filed: June 22, 2010

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Before BYE, CLEVINGER,<sup>1</sup> and COLLOTON, Circuit Judges.

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PER CURIAM.

Brandon L. Smith-Cushingberry appeals his sentence reduction granted by the district court<sup>2</sup> pursuant to the government's motion under Federal Rule of Criminal Procedure 35(b) to reduce his sentence based on his assistance with multiple investigations. We dismiss this appeal for lack of jurisdiction.

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<sup>1</sup>The Honorable Raymond C. Clevenger, III, Judge of the United States Court of Appeals for the Federal Circuit, sitting by designation.

<sup>2</sup>The Honorable Warren K. Urbom, United States District Judge for the District of Nebraska.

Smith-Cushingberry pleaded guilty, and was sentenced to sixty months imprisonment followed by five years supervised release, to conspiracy to possess with intent to distribute crack cocaine in violation of 21 U.S.C. § 846. Smith-Cushingberry cooperated with the government and provided information which led to the prosecution of two individuals. Thereafter, the government filed a motion to reduce Smith-Cushingberry's sentence pursuant to Rule 35(b). The government provided detailed information involving the nature of assistance provided by Smith-Cushingberry. Following a hearing, the district court reduced Smith-Cushingberry's sentence to forty months imprisonment followed by five years supervised release. On appeal, Smith-Cushingberry argues the sentence is unreasonable because the district court did not give enough weight to his assistance and cooperation.

This court is without jurisdiction to review Rule 35(b) sentence reductions unless one of four criteria are met under 18 U.S.C. § 3742(a). United States v. Haskins, 479 F.3d 955, 957 (8th Cir. 2007) (per curiam) (holding that jurisdiction over appeal of a Rule 35(b) sentence reduction is governed by 18 U.S.C. § 3742(a)). These four criteria are: (1) the sentence was imposed in violation of the law, (2) the sentence was imposed using an incorrect application of the sentencing guidelines, (3) the sentence is greater than the applicable guidelines range, or (4) the sentence is imposed for an offense without a sentencing guideline and is plainly unreasonable. 18 U.S.C. § 3742(a)(1)-(4). This court lacks jurisdiction to hear the appeal of the district court's ruling on the Rule 35(b) motion because Smith-Cushingberry's claim does not satisfy any of the criteria of § 3742(a). See United States v. Williams, 590 F.3d 579, 581 (8th Cir. 2009) ("Because [defendant's] claims do not satisfy any of the criteria listed in 18 U.S.C. § 3742(a), we conclude that they are unreviewable by this court.").

Accordingly, we dismiss the appeal.

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