

agreement with the individual Defendants, who were prosecutors or investigators in the Albany Division of the Middle District of Georgia. Under the alleged agreement, Plaintiff's sentence might be reduced if he provided the Defendants with "substantial assistance" in the "investigation and/or prosecution" of other individuals. According to Plaintiff, he and his brother provided the Defendants with such substantial assistance, but the Defendants failed to honor the agreement to move for a Rule 35(b) motion in his case.

Rule 35(b) provides: "Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person." Fed.R.Crim.P. 35(b)(1). The rule imposes additional requirements where the defendant provides "substantial assistance" more than one year after his sentencing. Fed.R.Crim.P. 35(b)(2).

Unfortunately for Plaintiff, prosecutors generally cannot be compelled to file a Rule 35(b) motion. *See e.g., Wade v. United States*, 504 U.S. 181, 185 (1992); *United States v. Fernandez-Leal*, 420 F. App'x 947 (11th Cir. Apr. 1, 2011). "Federal district courts may review the government's refusal to file a substantial-assistance motion if the defendant first makes a 'substantial threshold showing' that the refusal was based upon an unconstitutional motive, such as race or religion." *United States v. Uribe*, 486 F. App'x 823, 825 (11th Cir. Aug. 14, 2012) (*citing Wade*, 504 U.S. at 185-86). There is no suggestion in Plaintiff's motion that the Defendants were motivated by a constitutionally impermissible motive. Indeed, Plaintiff states that he was told he would not receive a sentence reduction recommendation unless the other individuals were convicted in a jury trial. None were so convicted.

In light of the foregoing, Plaintiff's petition for mandamus relief is hereby **DISMISSED** pursuant to section 1915A(b)(1) for failure to state a claim.

SO ORDERED, this 5th day of April, 2013.

/s/ W. Louis Sands
W. LOUIS SANDS
UNITED STATES DISTRICT JUDGE