

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Case No. CR605-034
)	CV607-043
ROYLAND KICKLIGHTER)	
)	

ORDER

Having exhausted his direct appeal (with a detour through 28 U.S.C. § 2255 to secure that right, *see* CV607-043), doc. 69, Royland Kicklighter now moves the Court to enforce his plea agreement with the government, doc. 72,¹ and for appointment of counsel “to represent him in considering his motion to compel the government to file [an Fed. R. Cr. P.] 35 [motion].” Doc. 71.

Defendant’s plea-enforcement motion is still pending and the time for the government to respond has not yet passed. Jurisdiction exists to

¹ There he

moves the court to enter an order compelling the government to comply with promises made in the plea agreement entered in this case. Specifically, the government promised defendant that it would file a FRCP Rule 35 motion to reduce sentence for defendant providing substantial assistance. The government has been requested numerous times to bring a Rule 35 proceeding, but the requests have been ignored.

Doc. 72 at 1.

reach it, *United States v. Hernandez*, 149 F. App'x 872 (11th Cir. 2005), but not if he seeks to reduce his sentence. *Id.*; see also *United States v. Florian*, 2007 WL 1362636 at * 12 (S.D. Fla. May 7, 2007) (reaching Rule 35-based, plea-enforcement claim on the merits).

However, there is no constitutional right to counsel in collateral proceedings, *Saunders v. United States*, 2010 WL 2180543 at * 4 (11th Cir. June 2, 2010), and “[c]ounsel must be appointed for an indigent federal habeas petitioner only when the interests of justice or due process so require.’ *Schultz v. Wainwright*, 701 F.2d 900, 901 (11th Cir. 1983).” *United States v. Aviles*, 2010 WL 2070677 at * 1 (11th Cir. May 25, 2010). The Court therefore **DENIES** Kicklighter’s motion to appoint counsel (doc. 71) without prejudice to renew it after the government responds to his “compel” motion, doc. 72. Even at that, the Court must then determine that there is some meat on the bare bones of his current claim *and* that he is not able to meaningfully represent himself.

SO ORDERED this 30th day of August, 2010.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT of GEORGIA