

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

GLENN DALE ACON, JR., )  
vs. )  
Plaintiff, )  
vs. )  
UNITED STATES OF AMERICA, )  
Defendant. )  
2:13-CV-40-JMS-WGH

## **Entry and Order Dismissing Action**

I.

Presently before the court is Glen Acon's complaint seeking a reduction of his sentence based on what he characterizes as chronic and severe health problems. He relies on U.S.S.G. § 1B1.13 as authority for the relief he seeks. His complaint is subject to screening pursuant to 28 U.S.C. § 1915A(b), which dictates that the action be dismissed if the complaint fails to state a claim upon which relief can be granted. *Jones v. Bock*, 127 S. Ct. 910, 921 (2007). Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

In this case, there is no recognized legal theory permitting the court in the district of a sentenced defendant's confinement to modify that defendant's sentence based on the defendant being in poor health. There is a scenario in which U.S.S.G. § 1B1.13, in conjunction with 18 U.S.C. § 3582(c)(1)(A)(i) and a motion to reduce the term of a defendant's sentence filed by the Director of the Bureau of Prisons *in the sentencing court* could result in the modification of a

sentence, but this is not Acon's sentencing court and the matter under consideration here has been filed by Acon himself, not the Director of the Federal Bureau of Prisons. Even in the sentencing court, where the Bureau of Prisons has not moved to reduce the terms of a defendant's sentence, the court may not modify a term of imprisonment. *United States v. DeFeo*, 90 CR. 250, 2008 WL 2557425 (S.D.N.Y. June 26, 2008)(citing cases) *aff'd*, 327 F. App'x 257 (2d Cir. 2009).

For the reasons explained above, the complaint fails to state a claim upon which relief can be granted. Dismissal of the action pursuant to 28 U.S.C. 1915A(b) is therefore mandatory. *Gladney v. Pendleton Corr. Facility*, 302 F.3d 773, 775 (7th Cir. 2002).

## II.

Judgment consistent with this Entry shall now issue.

Acon shall have **through June 11, 2013**, in which to either pay the \$350.00 filing fee or demonstrate that he lacks the financial means to do so.

**IT IS SO ORDERED.**

Date: 05/07/2013

Distribution:

GLENN DALE ACON, JR.  
15217-041  
TERRE HAUTE U.S. PENITENTIARY  
Inmate Mail/Parcels  
P.O. BOX 33  
TERRE HAUTE, IN 47808



Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana