

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DEMETRIUS MARTIN,)	
)	
Movant,)	
)	
v.)	No. 4:15CV630 SNLJ
)	
UNITED STATES OF AMERICA,)	
)	
Respondent,)	

MEMORANDUM AND ORDER

This matter is before the Court on movant’s motion for reduction of sentence under 18 U.S.C. § 3582(c)(2). Movant is not entitled to relief under § 3582(c)(2), and this action has been tentatively filed as a motion to vacate under 28 U.S.C. § 2255.

Movant pled guilty to felon in possession of a firearm. United States v. Martin, 4:10CR597 SNLJ. Utilizing the 2010 edition of the Guidelines Manual, the Court sentenced him to 84 months’ imprisonment. In calculating his sentence, the Court added four levels under 2K2.1(b)(4)(B) because the firearm movant possessed had an altered or obliterated serial number.

Movant seeks resentencing without the four-level enhancement. He argues that Amendment 784 to the United States Sentencing Guidelines, dated November 1, 2014, results in a reduction of his sentence. The Amendment, however, modified subsection (b)(6)(B); it has no effect on subsection (b)(4)(B). Therefore, movant is not entitled to relief under § 3582(c)(2).

Because he is not entitled to relief under the statute cited, movant may wish to convert his pleading to a motion to vacate under § 2255. Before reclassifying the instant motion, however, the Court must afford movant the opportunity either to withdraw the motion under § 3582 or to

consent to the Court's reclassification of it as a motion brought under 28 U.S.C. § 2255. See Morales v. United States, 304 F.3d 764, 765 (8th Cir. 2002).

Accordingly,

IT IS HEREBY ORDERED that movant is granted thirty (30) days from the date of this Memorandum and Order either to withdraw the instant motion to reduce sentence or to consent to the Court's reclassification of the motion as one brought pursuant 28 U.S.C. § 2255. Movant must advise the Court of his choice, in writing.

IT IS FURTHER ORDERED that if movant decides to pursue this action under 28 U.S.C. § 2255, he must file an amended motion to vacate on the court-provided form within thirty (30) days of the date of this Memorandum Order.

IT IS FURTHER ORDERED that the Clerk will mail to movant a copy of the Court's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence form.

Dated this 20th day of April, 2015.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE