

To: Clerk of Court, 500 Pearl Street New York, NY 10007

CC: Judge Paul G. Gardpehe, Jessica Feintsein

From: Brandon Green Reg. No. 56400-054

Re: Dist. Ct. Case No. 16 Cr. 281; United States v. Brandon Green, et al.

Date: September 15, 2021

DEFENDANT GREEN'S, REVISED PRO-SE, MOTION TO RECONSIDER/NOTICE OF APPEAL THE COURT'S
DISMISSAL OF GREENS MOTION TO CORRECT HIS SENTENCE UNDER FED.R.CRIM.P. 35(a), DOC. NO.
1064,1071

1. Relevant facts

Mr. Green was sentenced to 295 months and the judgment in that case was filed on July 26, 2021. And on August 10, 2021, Brandon Green filed a motion to correct his sentenced of 295 months pursuant to Fed.R.Crim.P. 35(a). However, on September 7, 2021 (Dkt. 1077) this court dismissed the motion concluding that because Brandon Green had filed a "Notice of Appeal", "this court has no jurisdiction over any substantive matters related to this case and is therefore precluded from addressing the merits of defendant rule 35 motion."

The court cited United States v. RamJohn, 866 F.2d 574, 575 (2d Cir. 1989) (holding that a notice of appeal confers jurisdiction on the court of Appeals and divest the district court of its control over those aspect of the case involved in the appeal." (Internal quotation marks omitted).

2. Authority of the court

First, this court have authority to reconsider its order dismissing Green's motion for correction of his sentence. See. *United States v. Lizalde*, No. 97-cr-649 (ARR), (E.D.N.Y. Oct.29, 2015) ("Motions for reconsideration in criminal cases have traditionally been allowed within the second circuit." *United States V. Yannotti*, 457 F. Supp 2d 385,388 (S.D.N.Y. 2005) (citing *United States v. Clark*, 984 F.2d 31,33 (2d Cir. 1993)). They are construed as motion under rule 6.3 of the local civil rules of the United States District courts for the Sothern District of New York.

3. Conflicting Authority in Fed.R. Crim. P. 35 and Fed. R. App. P. 4(b)(5) states that the court does have authority to address the merits of the rule 35 motion

(a) Fed.R.App.P. 4(B)(5)

"Generally, the filing of a notice of appeal divests the district court of jurisdiction over aspects of the case involved in the appeal. *United States v. Tovar-Rico*, 61 F.3d 1529,1532 (11th Cir. 1995). Nevertheless, the district court retains jurisdiction to correct a sentence pursuant to Fed.R.Crim.P. 35(a) and Fed.R. App. P. 4(b)(5)." *United States V. Rodriguez*, 499 Fed. Appx. 904, 909 (11th Cir. 2012).

And Federal Rule Of Appellant Procedures 4(b)(5) Jurisdiction states : "The filing of a notice of appeal under this rule 4(b) does not divest a district court of jurisdiction to correct a sentence under federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion." (Dec 1, 2017).

(b) Relevant Rule 35(a)

Notes of advisory committee on 2009 amendments states "former rule 35 permitted the correction of arithmetic, technical, or clear errors with 7 days of sentencing. In light of the increase complexity of the sentencing process, the committee concluded it would be beneficial to expand this period to 14 days, . . . Extension of the period in this fashion

will cause no jurisdictional problems if an appeal has been filed, because Federal Rule of Appellate procedure 4(b)(5) expressly provides that the filing of a notice of appeal does not divest the district Court of jurisdiction to correct a sentence under rule 35(a)"

Thus, Rule Fed.R.Crim.P. 35(a), Fed R. App. P. 4(b)(5) and sister circuits supports Greens argument that the court does have authority to address the merits of the 35(a) Motion to correct the sentence when a notice of appeal is filed.

(c) TO THE EXTENT THAT THIS COURT AND CIRCUIT HOLD OTHERWISE BASED ON UNITED STATES V. RAMJOHN, f.2D 574,575 (2D CIR. 1989), THE INSTANT CASE IS DISTINGUISHED AND/OR RAMJOHN SHOULD BE OVERRULED

Mr. Green argues based on the above facts and law as 4(b)(5) explains, to the extent that this court concludes otherwise that it does not have authority to reach the merits of Green's 35(a) motion pursuant to Ramjohn. Green states and argues that his case is materially distinguished from Ramjohn on the facts, law, and issue presented. Where Mr. Green is presenting the issue that, "Whether pursuant to Fed. R. Crim. P. 35(a) and Fed. R. App. P. 4(b)(5) the district court have authority to address the merits of his motion to correct his sentence of 295 months pursuant to rule 35(a) where Mr. Green have filed a notice of appeal.

Moreover, to the extent that this court holds otherwise that it does not have authority to address the merits because of Ramjohn, the Circuit court en banc should overrule Ramjohn because of the conflict.

Thus, based on the foregoing, Mr. Green respectfully request that the court reconsider its dismissal of his rule 35 motion and address the merits. And any other appropriate relief that this court deems warranted.

4. NOTICE OF APPEAL

IN addition, if this court confirms its dismissal of the rule 35 motion and or rule and denied this motion, Mr. Green request to file a notice of appeal of the order and all the orders pertaining to the disposition of the rule 35 motion.

Wherefore based on the above Mr. Green asks for the appropriate relief.

executed on 9/15/2021.

Brandon Green 56400054

MDC Brooklyn

CERTIFICATE OF SERVICE

I, Brandon Green certify that on 9/15/2021 a copy of the motion to reconsider/notice of appeal was sent to Judge Paul G. Gardpehe, 40 Foley Square New York, NY 10007, AUSA Jessica Feintsein 1 Saint Andrews Plaza, New York, NY 10007.

executed on 9/15/2021

Brandon Green

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Brooklyn
P.O. Box 329002
Brooklyn NY 11232

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SDNY

Judge Paul G. Gardephe
Thurgood Marshall
US Courthouse
40 Foley St
New York NY 10007



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