

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 93-326-1
	:	
YONNIE BAILEY a/k/a	:	
JUAN DEVEREAUX	:	

MEMORANDUM and ORDER

NORMA L. SHAPIRO, S.J.

MARCH , 2002

Defendant, Yonnie Bailey, has filed a *pro se* “Motion for Relief from Judgment or Order Pursuant to Fed. R. Crim. Proc. Rule No. 60.” Defendant was indicted by a grand jury and charged with robbery, use of a gun during a crime of violence, and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 1951(c), and 922(g). On September 7, 1993, defendant entered a plea of guilty to the three counts. On March 8, 1994, he was sentenced to 132 months’ incarceration, 3 years’ supervised release, and restitution of \$40,000. His motion seeks a reduction in the restitution imposed as part of the criminal sentence.

Defendant claims he never received any meaningful portion of the \$40,000 retail value of the merchandise taken in the robbery and he should be liable only for his proportional share even though the other alleged robbers may not have been arrested or prosecuted. Under the Federal Bureau of Prisons Financial Responsibility Program, he is now responsible for paying the entire amount in restitution and asserts that refusal to sign an agreement to that effect would prevent him from participating in educational or vocational programs of the Bureau of Prisons.

The court takes judicial notice of the Bureau of Prisons’ Inmate Financial Responsibility Program (“IFRP”). Participation in this program benefits the prisoner by making him

eligible for higher paid positions, performance pay above the maintenance pay level, bonus pay or vacation pay. Ordinarily, the minimum payment for non-UNICOR and UNICOR Grade 5 inmates will be \$25 per quarter while inmates assigned grades 1 through 4 in UNICOR will be expected to allot 50% of their monthly pay to payment of restitution. Failure to participate in the IFRP reflects the inmate's level of responsible behavior and has certain adverse consequences: no performance pay above maintenance pay level, no bonus pay or vacation pay; no work detail assignment or speaking engagement outside the secure perimeter of his institution; no UNICOR assignment; a monthly commissary spending limitation more than that for other inmates, no community-based program or preferential housing status; and no incentive for participation in residential drug treatment programs. The institution's IFRP Coordinator monitors all IFRP assignments and reports to a Regional IFRP Coordinator who reports, in turn, to a National IFRP Coordinator. See PS5380.07, Financial Responsibility Program, Inmate, Rules effective 1/27/2000.

This court is without jurisdiction to modify or correct this sentence. Title 18 U.S.C. § 3582(c) permits a district court to correct or modify a sentence if: 1) it receives a motion from the Bureau of Prisons stating that extraordinary and compelling reasons warrant a reduction and the requested reduction is consistent with the applicable policy statements issued by the Sentencing Commission; 2) the court acts under Fed. R. Crim. P. 35(c) to correct an arithmetical, technical, or other clear error present in the previously-imposed sentence within seven days after imposing the sentence; or 3) a defendant has been sentenced based upon a sentencing range subsequently lowered by the Sentencing Commission.

Under Fed. R. Crim. P. 35(c), the district court may act within seven (7) days of sentence to correct a sentence imposed as a result of arithmetical, technical, or other clear error. This

motion was filed 8 years after defendant's sentence was imposed and there was no arithmetical or any other error. Rule 35 does not permit the court to reconsider the application of the Sentencing Guidelines or to change its mind about the appropriate sentence. Defendant's motion must be denied.

However, while the payment of defendant's restitution obligation is subject to the Bureau of Prisons' Inmate Financial Responsibility Program policy while he is in custody, the amount of his restitution payments while on supervised release will be determined by the court based on his ability to pay the remaining balance. His restitution payments will not destroy his efforts to return to society as a contributing member of the community. As a defendant convicted prior to April 24, 2006, his obligation to pay restitution will end in accordance with 18 U.S.C. §3613(b). An appropriate Order follows.

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ORDER

AND NOW, this day of March, 2002, upon consideration of defendant's "Motion for Relief from Judgment or Order Pursuant to Fed. R. Crim. Proc. No. 60," the Government's response thereto, and for the reasons set forth in the accompanying Memorandum, it is **ORDERED** that defendant's motion is **DENIED**.

S.J.