

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

UNITED STATES OF AMERICA,	:	CRIMINAL ACTION
	:	
v.	:	
	:	
IFEDOO NOBLE ENIGWE	:	NO. 92-257
	:	
	:	

DuBOIS, J.

May 15, 2006

MEMORANDUM

Presently before the Court are two pro se motions by defendant Ifedoo Noble Enigwe: (a) Motion for Reconsideration of Defendant’s § 3582(c)(2) Motion (“Motion for Reconsideration”), and (b) Letter Motion for an Evidentiary Hearing.

In the Motion for Reconsideration, Enigwe moves for reconsideration of the Court’s Memorandum and Order dated July 27, 2005, in which the Court denied Enigwe’s motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 500 to the United States Sentencing Guidelines. United States v. Enigwe, 379 F. Supp. 724 (E.D. Pa. 2005). In the Letter Motion for an Evidentiary Hearing, Enigwe requests an evidentiary hearing on the issues underlying the Motion for Reconsideration. For the reasons set forth below, defendant’s Motion for Reconsideration is dismissed, and defendant’s Letter Motion for an Evidentiary Hearing is denied.

I. BACKGROUND

The Court sets forth only an abbreviated procedural history as pertinent to the pending Motion. A detailed factual and procedural history is included in the Court’s previously reported

opinions in this case. See United States v. Enigwe, 2003 WL 151385 at *2-6 (E.D. Pa. Jan, 14, 2003) (history of habeas proceedings); United States v. Enigwe, 212 F. Supp. 2d 420 (E.D. Pa. 2002); United States v. Enigwe, 2001 WL 708903, at *1-3 (E.D. Pa. June 21, 2001) (post-conviction procedural history); United States v. Enigwe, 1992 WL 382325, at *2-3 (E.D. Pa. Dec. 9, 1992) (factual history).

On May 6, 1992, defendant Ifedoo Noble Enigwe was charged in a four-count indictment with importing and trafficking in heroin. He was convicted by a jury on all four counts on August 12, 1992, and, on August 13, 1993, this Court sentenced him to, inter alia, 235 months imprisonment and five years of supervised release. This sentence included a two-level enhancement for obstruction of justice and a four-level enhancement for defendant's leadership role in the offense. Defendant's conviction and sentence were affirmed by the United States Court of Appeals for the Third Circuit in an unpublished decision on April 28, 1994. United States v. Enigwe, 26 F.3d 124 (3d Cir. 1994), cert. denied, 513 U.S. 950 (1994).

II. DISCUSSION

A. Motion for Reconsideration

In sentencing Enigwe, this Court found that he was "an organizer or leader of a criminal activity that involved five or more participants" and therefore applied a four-level enhancement pursuant to U.S.S.G. § 3B1.1. By Memorandum and Order dated July 27, 2005, the Court denied Enigwe's request to reconsider the imposition of that enhancement and modify his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 500 to the United States Sentencing Guidelines. United States v. Enigwe, 379 F. Supp. 724 (E.D. Pa. 2005)(E.D. Pa. 2005). The Court explained its reasoning for rejecting Enigwe's request as follows:

At Enigwe's sentencing, based on the testimony of Keinya Collier and Tondalaya Short, the Court expressly found that Enigwe was an organizer or leader of a criminal activity that involved five or more participants. (Tr. at 4). Based upon this finding, the Court enhanced Enigwe's sentence four-levels pursuant to § 3B1.1(a). The Court did not rely on the asset management exception articulated in Amendment 500, but rather invoked the express language of § 3B1.1(a). In other words, the Court did not conclude, nor does it conclude today, that Enigwe merely controlled assets of a criminal enterprise. To the contrary, Enigwe was an organizer or leader of other criminal participants.¹ Based on this finding, the four-level enhancement was mandated. See Gort-Didonato, 109 F.3d at 322 (as of November 1, 1993, an enhancement under § 3B1.1 is warranted where defendant exerted control over at least one individual within a criminal organization).

....

[E]ven if Amendment 500 had been in effect at the time of Enigwe's sentencing, the Court would have imposed the identical sentence as Amendment 500 is inapplicable to the case. That Enigwe exercised control over at least one participant is implicit in the Court's ruling at sentencing that Enigwe was an organizer or leader of a criminal activity that involved five or more participants pursuant to § 3B1.1. Therefore, the four-level sentence enhancement was mandatory. Consequently, 18 U.S.C. § 3582(c)(2) does not empower the Court to modify Enigwe's sentence and Enigwe's Motion to Modify Sentence is denied. Enigwe, 212 F. Supp. 2d 420, 424 (E.D. Pa. 2002) (defendant cannot seek a modification of his sentence under § 3582(c)(2) if the Guideline amendment does not lower the defendant's sentencing range).

United States v. Enigwe, 379 F. Supp. at 726-727 (internal citations selectively omitted).

Enigwe filed a Notice of Appeal dated August 3, 2005, stating his intention to appeal this

¹ On April 28, 1994, the Court of Appeals affirmed defendant's sentence stating that "the evidence showed that Enigwe, after recruiting, Short and Collier, assisted them in obtaining passports, purchased their round-trip tickets to and from the Philippines, transported them to the airport, provided them with spending money, paid for their accommodations in the Philippines and directed them to meet him at the Grand Hotel in New York upon their return to deliver the goods." United States v. Enigwe, No. 93-1806, slip op. at 6 (3d Cir. 1994). Based upon this evidence, the Third Circuit concluded: "[t]he record at trial and sentencing, thus, *clearly established that Enigwe was an organizer or leader of criminal activity that involved five or more participants* and further that it was otherwise extensive, involving an international heroin-smuggling organization." Id (emphasis added). This Court notes that, although it found at sentencing that Enigwe was an organizer or leader of a criminal activity that involved five or more participants, it made no finding that the criminal activity was "... otherwise extensive, involving an international heroin-smuggling organization," as stated by the Court of Appeals.

Court's Memorandum and Order dated July 27, 2005. Thereafter, on October 3, 2005 – sixty-eight (68) days after the Court issued its Memorandum and Order dated July 27, 2005 – Enigwe filed a Motion for Reconsideration in this Court.

A motion for reconsideration in a criminal case is timely if it is filed within the time for filing an appeal, i.e., if it is filed within ten (10) days. See, e.g., Browder v. Director, Dep't of Corrections of Illinois, 434 U.S. 257, 268 (1978) (“absent a rule specifying a different time limit, a petition for rehearing in a criminal case would be considered timely ‘when filed within the original period for review.’”) (quoting United States v. Healy, 379 U.S. 75, 78 (1964); United States v. Benanti, 137 Fed. Appx. 479, 481 (3d Cir. June 21, 2005) (unpublished) (“A motion for reconsideration of an order affecting the final judgment in a criminal case is timely filed if made within the period allotted for the noticing of an appeal; i.e., within 10 days.”); United States v. Thompson, 79 Fed. Appx. 22, 23 (5th Cir. Oct. 22, 2003) (“A motion for reconsideration in a criminal proceeding is a legitimate procedural device. Such a motion is timely if it is filed within the period allotted for noticing an appeal, in this case, within ten days of the district court’s order denying the § 3582(c)(2) motion.”); Federal Rule of Appellate Procedure 4(b)(1)(A) (“In a criminal case, a defendant’s notice of appeal must be filed in the district court within 10 days after the later of (i) the entry of either the judgment or the order being appealed; or (ii) the filing of the government’s notice of appeal.”).

If a motion for reconsideration is not timely filed, then the district court lacks jurisdiction to consider it. See, e.g., United States v. Arrate-Rodriguez, 160 Fed. Appx. 829, 833 (11th Cir. Dec. 20, 2005) (unpublished) (stating that motions “for rehearing or reconsideration of a criminal judgment . . . are within the district court’s jurisdiction to consider, but only if timely filed.”);

United States v. Thompson, 79 Fed. Appx. at 23 (“Thompson’s motion for reconsideration was filed 36 days after entry of the order denying the § 3582(c)(2) motion. The motion was therefore untimely, and the district court was without jurisdiction to entertain it.”).

Because Enigwe filed the Motion for Reconsideration long after the ten-day period had expired, the Court lacks jurisdiction to reach the merits of his claims. Enigwe’s arguments to the contrary are unpersuasive. Accordingly, the Court dismisses the Motion for Reconsideration.

Assuming arguendo that the Court had jurisdiction, the Court would conclude that, for the reasons set forth in this Court’s Memorandum and Order dated July 27, 2005, 18 U.S.C. § 3582(c)(2) simply provides no basis for lowering Enigwe’s sentence. United States v. Enigwe, 379 F. Supp. 724 (E.D. Pa. 2005).

B. Letter Motion for an Evidentiary Hearing

In the Letter Motion for an Evidentiary Hearing, Enigwe moves the Court for an evidentiary hearing on the issues that underlie the Motion for Reconsideration. In light of the Court’s dismissal of the Motion for Reconsideration for lack of jurisdiction, the Court concludes that an evidentiary hearing is not warranted.

Moreover, the Court notes that, at Enigwe’s sentencing hearing, the Court heard evidence on precisely the same issues which he now seeks to raise, namely whether Enigwe was an organizer or leader of a criminal activity that involved five or more participants. Based on the testimony of Keinya Collier and Tondalaya Short, the Court expressly found that Enigwe organized or led a criminal activity that involved five or more participants, and accordingly, enhanced Enigwe’s sentence four-levels pursuant to § 3B1.1(a). The Court of Appeals affirmed that sentence. United States v. Enigwe, No. 93-1806, slip op. at 6 (3d Cir. 1994).

Clearly, the record in this case conclusively establishes that Enigwe is not now entitled to an evidentiary hearing. Compare United States v. Booth, 432 F.3d 542, 545-46 (3d Cir. 2005). Contrary to Enigwe's claim, this is not a case where "the files and records of the case are inconclusive as to whether the movant is entitled to relief." Id. Accordingly, the Court denies the Letter Motion for an Evidentiary Hearing.

III. CONCLUSION

For the foregoing reasons, the Court dismisses defendant's Motion for Reconsideration, and denies defendant's Letter Motion for an Evidentiary Hearing.

An appropriate Order follows.

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

UNITED STATES OF AMERICA,

v.

IFEDOO NOBLE ENIGWE

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CRIMINAL ACTION

NO. 92-257

ORDER

AND NOW, this 15th day of May, 2006, upon consideration of the pro se Motion for Reconsideration of Defendant's § 3582(c)(2) Motion (Document No. 423, filed October 3, 2005), the pro se Letter to Judge DuBois (Document No. 427, filed October 3, 2005), the Government's Response to Defendant's Motion to Reconsider Denial of Motion to Modify Sentence Pursuant to 18 U.S.C. § 3582(c)(2) (Document No. 430, filed December 1, 2005), the pro se Defendant's Reply to Government's Response to Defendant's Section 3582(c)(2) Motion Sub Judice (Document No. 431, filed December 9, 2005), and the pro se Letter Motion for an Evidentiary Hearing (Document No. 432, filed February 24, 2006), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** as follows:

1. The Motion for Reconsideration of Defendant's § 3582(c)(2) Motion (Document No. 423, filed October 3, 2005) is **DISMISSED**; and
2. The Letter Motion for an Evidentiary Hearing (Document No. 432, filed February 24, 2006) is **DENIED**.

BY THE COURT:

/s/ **JAN E. DuBOIS, J.**

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