IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
August 25, 2011

Lyle W. Cayce
Clerk

No. 11-30156
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MAXON HARVEY MORGAN,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:93-CR-491-5

Before REAVLEY, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Maxon Harvey Morgan, federal prisoner # 239980-034, appeals the district court's denial of his motion to compel the Government to file a motion for reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, and the denial of his discovery motion under Rule 36 of the Federal Rules of Civil Procedure. Morgan argues that the Government was required to file a motion for a reduction of his sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure based on his substantial assistance in providing

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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information in the criminal prosecution of another individual. He does not argue that the Government's refusal to file a Rule 35 motion was based on an unconstitutional motive. *See, e.g., United States v. Grant*, 493 F.3d 464, 467 (5th Cir. 2007). He has also failed to show that the Government either was compelled to file or bargained away its discretion concerning whether to file a Rule 35 motion. *See United States v. Price*, 95 F.3d 364, 368 n.2 (5th Cir. 1996).

Morgan's motion to compel was "an unauthorized motion which the district court was without jurisdiction to entertain." *United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). Accordingly, we affirm the district court's denial of Morgan's motion to compel and related discovery motion. *See Brewster v. Dretke*, 587 F.3d 764, 769 n.3 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 3368 (2010).

AFFIRMED.