

FILED
DEC 30 1977

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES C. BOONE, # 93623)
)
 Movant,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 77-C-434
No. 76-CR-113 ✓

ORDER

The Court has for consideration a motion pursuant to 28 U.S.C. § 2255 filed pro se by James C. Boone.

Movant is a prisoner at the Regional Treatment Center, Lexington, Oklahoma, pursuant to conviction and sentence in the District Court of Tulsa County, Oklahoma, in two cases, CRF-76-1205, possession of unlawful controlled drugs and CRF-76-1871, delivery of marijuana after former conviction of a felony. The sentence is ten years split sentence -- four years to be served in the penitentiary and six years to be served on probation in Case No. CRF-76-1205, and ten years split sentence -- four years to be served in the penitentiary and six years to be served on probation in Case No. CRF-76-1871; the sentence in CRF-76-1871 to run concurrently with the sentence in CRF-76-1205.

In this Federal Court, Movant entered a plea of guilty on the 9th day of September, 1976, to a one-count indictment charging possession with intent to distribute approximately 1700 secobarbital tablets, a Schedule II non-narcotic controlled substance, in violation of Title 21, United States Code, § 841(a)(1). He was sentenced November 3, 1976 to Two (2) Years imprisonment and a special parole term of Six (6) Years, to commence at the expiration of and run consecutive to any term imposed by the State Court.

Movant challenges his Federal conviction and sentence as being in violation of his rights as guaranteed by the Constitution of the United States upon the following grounds:

1. That he was "sentenced under the wrong statute, in that he was charged with two counts of violation of 21 U.S.C. sec. 841(a)(1) which is a violation of controlled substance in schedule 1 or 2 which a norctac (sic) druge.(sic) But the record reflects that he pled guilty to knowingly and with intention to sell and distribute 1,700 secobarbital a red downer type non-norectic (sic) drug. Thefore (sic) he should have been convicted sentenced and/or charged under Title 21 U.S.C. 841(1)(b)"
2. That he was never advised of his right to appeal the judgment and sentence nor that he had a right to have counsel appointed to perfect his appeal if he did not have funds with which to employ counsel.

Movant's first claim for relief is without merit. From his petition it appears that the defendant is confused in that he apparently assumes that he was sentenced under the provisions of Title 21, § 841(b)(1)(A). The sentence of the Court was less than the maximum sentence authorized under § 841(a)(1)(B). U. S. v. Rich, 518 F.2d 980, 986-987 (8th Cir. 1975); United States v. Simpson, 481 F.2d 582, 583 (5th Cir. 1973), Cert. Den., 414 U.S. 1095; United States v. Scales, 464 F.2d 371, 376 (6th Cir. 1972). The record in in this case shows conclusively that the defendant was indicted and convicted on his plea of guilty under the provisions of Title 21, § 841(a)(1) and that defendant was sentenced under the provisions of Title 21, 841(b)(1)(B).

Likewise, Movant's second claim for relief should be denied. Rule 32(a)(2) provides in part as follows:

"There shall be no duty on the Court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant."

The Court is only required to advise the defendant of his right to appeal in a case which has gone to trial on a plea of not guilty. Rule 32, Federal Rules of Criminal

Procedure; Barber v. United States, 427 F.2d 70 (10th Cir. 1970).

For the reasons stated herein, Movant's motion is denied.

IT IS SO ORDERED this 30th day of December, 1977.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RONNIE GENE WOODS,)
)
 Defendant.)

No. 77-CR-72-C

FILED

DEC 28 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has before it for consideration the motion of the defendant, Ronnie Gene Woods, for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendant was charged by indictment with a violation of Title 18 U.S.C. § 2312. On August 9, 1977, a jury found him guilty of this charge. He now asks the Court to modify the sentence imposed by it upon him on September 29, 1977.

In considering defendant's motion for reduction of sentence, the Court has carefully reviewed the entire record and finds that the sentence imposed was appropriate, just and reasonable under the circumstances of this case. Therefore, the motion for reduction of sentence is hereby overruled.

It is so Ordered this 28th day of December, 1977.


H. DALE COOK
United States District Judge

DEFENDANT

SHANNON CURTIS COOK

DOCKET NO.

77-CR-96-B

JUDGMENT AND PROBATION ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
12-	28	77

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Joel Wohlgenuth, Ret.

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/reason of

NOT GUILTY. Defendant is discharged, and the Indictment
is dismissed.

GUILTY.

FINDING &
JUDGMENT

Defendant ~~is not guilty as found by the Court~~
on the ruling on motion for Judgment of Acquittal.

SENTENCE
OR
PROBATION
ORDER

FILED

DEC 28 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

Joel Wohlgenuth

() CLERK

() DEPUTY

Date 12-28-77

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

United States of America vs.

DEFENDANT

CAROLYN WEBB

DOCKET NO.

77-CR-133-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 12 DAY 27 YEAR 77

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

David Peterson, Appt.

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

DEC 27 1977

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

Jack C. Silver, Clerk U. S. DISTRICT COURT

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Sections 1708 and 495, as charged in Counts one and three of the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 1 - Two (2) years, to run concurrently with state sentence defendant is now serving.

Count 3 - Thirty-six (36) months, and on the condition that the defendant be confined in a jail type institution for a period of six (6) months, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for thirty (30) months, to run consecutively with sentence imposed in Count 1.,

SPECIAL CONDITIONS OF PROBATION

The special condition of probation is that the defendant make restitution in the amount of \$428.30, to the Court Clerk at \$20.00 a month until paid in full, payments to begin the month following release from the jail type institution.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

U.S. Magistrate

By

() CLERK

() DEPUTY

Date 12-27-77

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

United States of America vs.

DEFENDANT

VIRGINIA RUTH ANDERSON VAN METER

DOCKET NO.

77-CR-104-B

AMENDED

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
12	13	77

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Randolph Stainer, Appt.

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

DEC 13 1977

Jack C. Silver, Clerk U. S. DISTRICT COURT

FINDING & JUDGMENT

There being a finding/verdict of NOT GUILTY. Defendant is discharged. GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 751(a), as charged in the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Thirty-six (36) months, and on the condition that the defendant be confined in a jail type institution for a period of One (1) month, which is to run concurrently with the sentence defendant is now serving in Fort Worth, Texas, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for thirty-five (35) months, to commence after termination of her incarceration in Fort Worth, to run concurrently with sentence imposed in case 77-CR-105.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

U.S. Magistrate

Allen C. Brown

By

() CLERK

() DEPUTY

Date

12 13 77

DEFENDANT

VIRGINIA RUTH ANDERSON VAN METER

AMENDED

DOCKET NO.

77-CR-105-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 12 DAY 13 YEAR 77

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Randolph Stainer, Appt.

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

DEC 13 1977

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

Jack C. Silver, Clerk U. S. DISTRICT COURT

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 2312, as charged in the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Thirty-six (36) months, and on the condition that the defendant be confined in a jail type institution for a period of One (1) month which is to run concurrently with sentence defendant is now serving in Fort Worth, Texas, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for thirty-five (35) months, to commence after the Fort Worth sentence.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

[Signature]

Date 12-13-77

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

DEFENDANT

NATHAN GRIER, III

DOCKET NO.

77-CR-129-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 12 DAY 13 YEAR 77

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

A. A. Berringer, Appt.

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

DEC 13 1977

There being a finding/verdict of

NOT GUILTY. Defendant is discharged. GUILTY.

Jack C. Silver, Clerk U. S. DISTRICT COURT

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 495, as charged in the Information.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for ~~the~~ the Maximum period of Ten (10) years for a study as described in T. 18, U.S.C., Section 4205(d), the results of such study to be furnished this Court within 90 days, whereupon the sentence of imprisonment herein imposed may be subject to modification in accordance with T. 18, U.S.C., Section 4205(c).

IT IS FURTHER ADJUDGED that the execution of this sentence is deferred until January 4, 1978, at 10:00 A.M., at which time defendant is to present himself to the U.S. Marshal. Defendant is to stay in touch with his attorney, the probation office and not associate with known criminals.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, placement in the U. S. Medical Center for Federal Prisoners, Springfield, Missouri.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

Date 12-13-77

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 76-CR-78-C ✓
)
 JIMMY CARROLL DICK, and)
 ROBERT LEE DICK, JR.,)
 et al.,)
)
 Defendants.)

FILED
DEC 23 1977
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the motions of the defendants, Jimmy Carroll Dick and Robert Lee Dick, Jr., for reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendants entered pleas of guilty to an indictment charging them with violations of Title 18 U.S.C. § 371, and they now ask the Court to modify the sentences imposed by it upon them on August 20, 1976 and January 1, 1977, respectively.

In considering defendants' motions for reduction of sentence, the Court has carefully reviewed the entire record and finds that the sentences imposed were appropriate, just and reasonable under the circumstances of this case. Therefore, the motions for reduction of sentence are hereby overruled.

It is so Ordered this 12th day of December, 1977.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 12 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 77-CR-37-C
)
DANIEL ALEX MACIAS,)
)
Defendant.)

O R D E R

The Court has before it for consideration the motion of the defendant, Daniel Alex Macias, for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendant pleaded guilty to the indictment in the above entitled case charging him with violations of Title 21 U.S.C. §§ 846 and 841(a)(1), and Title 18 U.S.C. § 2. On June 10, 1977, the defendant was sentenced by the Court to serve substantial terms of imprisonment and special parole terms, and to pay fines.

Under Rule 35, the Court retains jurisdiction to reduce a sentence for only 120 days after it is imposed. Rule 35 states: "The Court may reduce a sentence within 120 days after the sentence is imposed, . . ." The defendant's motion to reduce was received by the Court on November 28, 1977, 171 days after sentence was imposed. Defendant's conviction is presently being reviewed on appeal to the United States Court of Appeals for the Tenth Circuit. In addition to the fact that defendant's motion was filed out of time, a district court is without authority to modify a sentence once an appeal has been noted. Berman v. United States, 302 U.S. 211, 58 S.Ct. 164, 82 L.Ed. 204 (1937); United States v. Burns, 446 F.2d 896 (9th Cir. 1971); United States v. Grabina, 309 F.2d 783 (2nd Cir. 1962), cert. denied, 374 U.S. 836, 83 S.Ct. 1885, 10 L.Ed.2d 1057 (1963).

For the foregoing reasons, it is therefore ordered that defendant's motion for reduction of sentence be and the same is hereby overruled.

It is so Ordered this 12th day of December, 1977.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 12 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STEVE LAVADA NICHOLSON,)
)
Defendant.)

No. 77-CR-51-C

O R D E R

The Court has before it for consideration the motion of the defendant, Steve Lavada Nicholson, for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendant pleaded guilty to the indictment in the above entitled case charging him with a violation of Title 18, U.S.C. § 2314. On June 10, 1977, the defendant was sentenced by the Court to serve a five year term of imprisonment, not to run concurrently with a sentence he was then serving on a State charge.

Under Rule 35, the Court retains jurisdiction to reduce a sentence for only 120 days after it is imposed. Rule 35 states: "The Court may reduce a sentence within 120 days after the sentence is imposed, . . ." The defendant's motion to reduce was received by the Court on December 6, 1977. Clearly this is beyond the 120 day period provided by Rule 35 for the reduction of a sentence.

For the foregoing reason, it is therefore ordered that the defendant's motion for reduction of sentence be and the same is hereby overruled.

It is so Ordered this 12th day of December, 1977.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 12 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 77-CR-67-C
)
DARYL WAYNE PARKER,)
)
Defendant.)

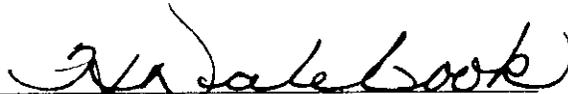
O R D E R

The Court has before it for consideration the motion of the defendant, Daryl Wayne Parker, for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendant pleaded guilty to the indictment in the above entitled case charging him with violations of Title 18, U.S.C. § 495. On June 30, 1977, the defendant was sentenced by the Court to serve two concurrent three year terms of imprisonment.

Under Rule 35, the Court retains jurisdiction to reduce a sentence for only 120 days after it is imposed. Rule 35 states: "The Court may reduce a sentence within 120 days after the sentence is imposed, . . ." The defendant's motion to reduce was received by the Court on December 6, 1977. Clearly this is beyond the 120 day period provided by Rule 35 for the reduction of a sentence.

For the foregoing reason, it is therefore ordered that defendant's motion for reduction of sentence be and the same is hereby overruled.

It is so Ordered this 12th day of December, 1977.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEC 1 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

DENNIS EUGENE DuBOIS, # 23425-149,)
Movant,)
v.)
R. A. OSBORN, Warden, Federal Cor-)
rectional Institution, Texarkana,)
Texas, et al.,)
Respondents.)

NOS. 77-C-388-B
76-CR-118-B

ORDER

The Court has for consideration the pro se, in forma pauperis motion pursuant to 28 U.S.C. § 2255 filed by Dennis Eugene DuBois. The cause has been assigned civil case No. 77-C-388 and docketed in this criminal case No. 76-CR-118.

Moyant is a prisoner in the Federal Correctional Institution, Texarkana, Texas, pursuant to conviction herein on his plea of guilty to attempting to disable the engine of a train operated in interstate commerce by shooting at it in transit in violation of 18 U.S.C. § 1992. He was sentenced October 13, 1976, for treatment and supervision until discharged pursuant to the Federal Youth Corrections Act as provided by 18 U.S.C. § 5010(b). Therefore, his motion if treated as a motion for modification of sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, is out of time. The 120-day jurisdictional period within which a Rule 35 motion may be considered has expired. Further, the Court denied a prior Rule 35 motion by Order dated February 9, 1977.

Movant does not in any way challenge the validity of his plea, conviction and sentence in this Court. Rather, he challenges the Parole Commission's application of its guidelines to his case and that the institution is not providing treatment as required by the intent of the Youth Corrections Act, both of which are administrative responsibilities unrelated to the sentencing process. His appropriate remedy is to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 in the United States District Court having jurisdiction over his place of confinement, and that only after available administrative remedies have first been exhausted. See, Rogers v. United States, No. 76-1122 (10th Cir. filed Nov. 2, 1976); Weiser v. United States, No. 76-1589 (10th Cir. filed Feb. 10, 1977), which cases are applicable to establish the appropriate procedure in regard to the issues raised to this Court herein although they deal with a different factual claim than here presented.

Having carefully reviewed the motion, and being fully advised in the premises, the Court finds that there is no necessity for the appointment of counsel or an evidentiary hearing herein. The Movant's request for release on personal recognizance during the pendency of this proceeding as well as his motion pursuant to 28 U.S.C. § 2255 in this Northern District of Oklahoma should be overruled and denied.

IT IS, THEREFORE, ORDERED that Movant's request for release on personal recognizance and for appointment of counsel be and they are hereby overruled.

IT IS FURTHER ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Dennis Eugene DuBois be and it is hereby overruled, without prejudice to his filing a habeas corpus petition in the proper jurisdiction in Texas if necessary after administrative remedies have been exhausted, and the case before this Court is dismissed.

Dated this 1st day of December, 1977, at Tulsa, Oklahoma.



CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA