

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

Case No. 03-20081-JWL

Joshalyn Pair,

Defendant.

MEMORANDUM & ORDER

Defendant Joshalyn Pair was charged in a one-count information with using a communication facility to aid and abet the distribution of a controlled substance. Ms. Pair entered a plea of guilty on March 1, 2004. In February 2005, Ms. Pair was sentenced to a 24-month term of imprisonment, which was below the advisory guideline range of 46 to 48 months. There was no direct appeal. Ms. Pair has now moved for reconsideration of her sentence pursuant to 18 U.S.C. § 3582. In essence, Ms. Pair desires to serve the remainder of her sentence under house arrest based on her self-described record of good conduct.

The motion is denied as Ms. Pair is clearly not entitled to relief under 18 U.S.C. § 3582(c). Subsection (1) of that section does not apply here, as the Director of the Bureau of Prisons has not filed a motion on Ms. Pair's behalf. *See United States v. Green*, 405 F.3d 1180, 1184 (10th Cir. 2005). While subsection (1) also permits any modification that is expressly permitted by Rule 35 of the Federal Rules of Criminal Procedure, Rule 35 is similarly inapplicable in this context. Rule 35 only allows sentence modification for correcting "arithmetical, technical, or

other clear error” within 7 days after sentencing, or reducing a sentence for substantial assistance to the government. Fed. R. Crim. P. 35(a), (b). Ms. Pair has filed her motion well after the 7-day limitation period and her claims do not involve substantial assistance. *See id.* at 1184-85. Finally, subsection (2) of section 3582 permits the modification of a sentence if, after sentencing, the Sentencing Commission lowers the sentencing range pursuant to 28 U.S.C. § 994(o). That section does not apply as Ms. Pair does not allege an amendment to the guidelines by the Sentencing Commission.

For the foregoing reasons, Ms. Pair’s motion is denied.

IT IS THEREFORE ORDERED BY THE COURT that Ms. Pair’s motion for reconsideration of her sentence (doc. 155) is denied.

IT IS SO ORDERED this 17th day of July, 2006.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge