

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 6:06-cr-10129-JTM-1

JAMES E. BAKER,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on defendant James Baker's "Notice of Concerns." Dkt. 214. The court liberally construes the Notice as a motion to reconsider this court's re-imposition of a three-year term of supervised release upon resentencing defendant in connection with his § 2255 motion. *See* Dkt. 213. The court determined in its prior Memorandum and Order that due to *Johnson v. United States*, 135 S.Ct. 2551 (2015), defendant was entitled to a custodial sentence of time served, because he had already served a greater custodial sentence than permitted under the corrected statutory maximum for his offense. The court re-imposed the same three-year term of supervised release that it had originally imposed. Defendant now questions whether it is lawful to re-impose this term of supervised release given that he served a custodial sentence exceeding the maximum.

Defendant's argument is foreclosed by the governing statute. A term of supervised release does not begin until an individual "is released from imprisonment," and it generally "does not run during any period in which the person is imprisoned in

connection with a conviction for a Federal ... crime.” 18 U.S.C. § 3624(e). For that reason, the statute does not reduce the length of a term of supervised release when a defendant has served prison time in excess of the statutory maximum. *See United States v. Johnson*, 529 U.S. 53, 60 (2000) (rejecting defendant’s motion to credit extra 2.5 years served in prison against his supervised release term).

IT IS THEREFORE ORDERED this 11th day of October, 2016, that defendant’s “Notice of Concerns” (Dkt. 214) seeking a reduction in the term of supervised release is DENIED.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE