

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

United States of America,

Plaintiff,

v.

Case No. 06-20078-01-JWL

Jason McKinney,

Defendant.

MEMORANDUM & ORDER

In June 2007, defendant Jason McKinney pled guilty to one count of possession with intent to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. § 841(b)(1)(A)(iii) and one count of use of a firearm in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c). In March 2009, the court sentenced Mr. McKinney to 360 months' imprisonment on the first count and sixty months' imprisonment on the second count, to run consecutively. Since that time, the court has denied three motions by Mr. Kinney to reduce his sentence. Most recently, the court denied (or, more accurately, dismissed for lack of jurisdiction) Mr. McKinney's "motion for nunc pro tunc judgment" in which he again sought a sentence reduction—this time on the basis of Amendment 790. Mr. McKinney now seeks reconsideration of that order on the grounds that the court improperly construed the motion as one filed under 18 U.S.C. § 3582(c)(2). In his motion, Mr. McKinney urges that he was not seeking a reduction of his sentence, but simply asking that his sentence be corrected in light of Amendment 790. The motion is denied. A nunc pro tunc judgment is appropriate only to correct traditional clerical errors so that the record reflects "that which was in fact done."

United States v. Meindl, 269 Fed. Appx. 849, 850 (10th Cir. Mar. 18, 2008). In the criminal context, however, a nunc pro tunc order cannot be used to resentence a defendant or otherwise modify a sentence. *Id.* at 850-51. Mr. McKinney points to no clerical error in the judgment. He clearly seeks a modification of his sentence which the court cannot grant in the context of a nunc pro tunc order. *Id.* at 851.

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. McKinney's motion for reconsideration (doc. 286) is denied.

IT IS SO ORDERED.

Dated this 15th day of February, 2017, at Kansas City, Kansas.

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