

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case No. 07-10143-06-JTM

CHESTER RANDALL, JR.,  
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the Motion for Reconsideration filed by defendant Chester Randall. The court has previously denied Randall's Motion to Modify Sentence (Dkt. 651), which was predicated on an amendment to U.S.S.S.G. 4A1.1(e), finding that it was without jurisdiction to hear Randall's challenge to the sentence imposed by the court, in light of the Notice of Appeal submitted on Randall on May 11, 2010, prior to his Motion to Vacate.

The Federal Rules of Criminal Procedure do not explicitly provide a vehicle for reconsideration, but the courts will review such motions pursuant to the common law doctrine recognized in *United States v. Healy*, 376 U.S. 75, 84 S.Ct. 553, 11 L.Ed.2d 527 (1964). *United States v. Anderson*, 36 F.Supp.2d 1264, 1265 (D.Kan.1998) (citing *United States v. Corey*, 999 F.2d 493, 495 (10th Cir.1993)). Relief by reconsideration requires proof (1) that controlling law has changed since the court's prior order, (2) new evidence is now available, or (3) the existence of clear

error or manifest injustice. *United States v. Harris*, 2009 WL 3244720, at \* 2 (D.Kan. Oct. 6, 2009) (citing *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir.2000)).

Randall's Motion for Reconsideration fails to meet these standards, as it simply offers a repetition of arguments previously addressed to, and rejected by, the court. The court specifically found that it had no jurisdiction in light of the pending appeal. In addition, the court found that even if it had jurisdiction, the modification relied on by Randall (Amendment 742) was not retroactive.

IT IS ACCORDINGLY ORDERED this 29<sup>th</sup> day of July, 2011, that the defendant's Motion to Reconsider (Dkt. 657) is hereby denied.

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