

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 07-20099-JWL
)
 CESAR OSBALDO ARMENDARIZ SOTO,)
)
 Defendant.)
)
 _____)

MEMORANDUM AND ORDER

This matter comes before the Court on defendant’s *pro se* motion for modification of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) (Doc. # 1154). For the reasons set forth below, the Court **denies** the motion.

The Government opposes the motion on the basis that defendant has not satisfied the applicable exhaustion requirement. Section 3582(c)(1)(A) allows a defendant to bring a motion for reduction of a term of imprisonment “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” *See id.*¹

¹ The Tenth Circuit recently noted that it, like other circuits, has treated this exhaustion requirement as a nonjurisdictional mandatory claim-processing rule, which must therefore be raised by the Government in opposition to a motion for relief under the statute. *See United States v. Avalos*, __ F. App’x __, 2021 WL 1921847, at *2 n.2 (10th Circuit). Continued...

Defendant has not indicated in his motion that he made a request to his warden or can otherwise satisfy this exhaustion requirement. The Government states in its response that the Bureau of Prisons has no record of such a request by defendant. Defendant has not filed a reply brief. Defendant has therefore failed to show satisfaction of this requirement for relief under Section 3582(c)(1)(A). Accordingly, the Court denies the motion, although this denial is without prejudice to the filing of another motion once defendant has satisfied the exhaustion requirement.

IT IS THEREFORE ORDERED BY THE COURT THAT defendant's motion for a sentence modification (Doc. # 1154) is hereby **denied**.

IT IS SO ORDERED.

Dated this 10th day of June, 2021, in Kansas City, Kansas.

s/ John W. Lungstrum

John W. Lungstrum

United States District Judge

Cir. May 13, 2021) (unpub. op.). The Court therefore denies the motion instead of dismissing it for lack of jurisdiction.