

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL ACTION
v.)	
)	No. 11-20111-01-KHV
DANA J. HUFF,)	
)	
Defendant.)	
_____)	

ORDER

On August 20, 2013, the Court sentenced defendant to 40 months in prison. On August 23, 2013, defendant filed an appeal which remains pending with the Tenth Circuit Court of Appeals. This matter is before the Court on defendant's letter (Doc. #103), which the Court construes as a motion to clarify sentence. Defendant asks the Court to clarify and inform the Bureau of Prisons that he should receive credit for time served while in state custody from May 2, 2012 through August 22, 2013. Subject to exceptions which do not apply in this case, the filing of a notice of appeal divests a district court of jurisdiction. See United States v. Brown, 290 Fed. Appx. 157, 159 (10th Cir. 2008); United States v. Prows, 448 F.3d 1223, 1228 (10th Cir. 2006); United States v. Meyers, 95 F.3d 1475, 1489 n.6 (10th Cir. 1996). Because defendant has already filed a notice of appeal, the Court denies defendant's motion for lack of jurisdiction.¹ Subject to the Rules of the Tenth Circuit Court of Appeals, defendant may seek leave from that court to correct the record on appeal.

¹ In addition, to the extent that defendant asks the Court to determine what credit he should receive for his time in state custody, he must seek such a determination from the Bureau of Prisons. See United States v. Chavez, 723 F.3d 1226, 1231 n.2 (10th Cir. 2013) (federal district court does not have authority to grant credits against federal sentences; such authority lies exclusively with BOP whose decisions are subject to appeal and ultimately judicial review).

IT IS THEREFORE ORDERED that defendant's letter (Doc. #103), which the Court construes as a motion to clarify sentence, filed January 16, 2015 be and hereby is **DENIED for lack of jurisdiction.**

Dated this 4th day of February, 2015 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge