

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. 14-10137-JTM

JONEARL SMITH,
Defendant.

MEMORANDUM AND ORDER

By its Order of July 20, 2020 (Dkt. 57), the court denied defendant Jonearl Smith's 28 U.S.C. § 2255 Motion to Vacate his conviction for brandishing a firearm in furtherance of a drug trafficking crime. Previously, on June 18, 2020, the court had denied Smith's motion for an immediate release from custody, determining that he was unlikely to succeed on his § 2255 motion. The matter is now before the court on Smith's January 4, 2021 motion for reconsideration of the earlier order denying his request for an appeal bond and for immediate release from prison.

However, Smith filed a timely appeal from the rejection of his motion to vacate on August 13, 2020, and the court is therefore without jurisdiction to hear his present motion to reconsider his release, which is directly tied to the merits of the motion to vacate. Moreover, the motion to reconsider the provisional release, filed more than six months after denial of his motion for an appeal bond, is untimely. *See* D. Kan. R. 7.3

(motions to reconsider non-dispositive order must be filed within 14 days). This untimeliness precludes issuing any “indicative ruling” under Fed.R.Crim.Pr. 37. *See United States v. Amado*, 841 F.3d 867, 871 (10th Cir. 2016) (“Before a district court may exercise jurisdiction under Fed. R. Crim. P. 37 – and effectively sidestep the rule that a notice of appeal divests it of jurisdiction as to matters pending on appeal – the motion for relief must be timely.”).

IT IS ACCORDINGLY ORDERED this day of January, 2021, that defendant’s Motion to Reconsider (Dkt. 64) is hereby dismissed for lack of jurisdiction.

J. Thomas Marten
J. Thomas Marten, Judge