



**U.S. Department of Justice**

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November 21, 2013

**via CM/CMS**

Honorable Gregory M. Sleet  
United States District Court  
J. Caleb Boggs Federal Building  
844 King Street  
Wilmington, Delaware 19801

**Re: United States v. Charles Smith,  
Criminal Action No. 13-22-GMS**

Dear Chief Judge Sleet:

Please accept this letter as the Government's Response to the Defendant's *pro se* letter to the Court dated November 13, 2013, which was docketed as a "Motion for Miscellaneous Relief" (Docket Item 19). In the letter, the Defendant requests (1) a thirty-day extension of time to report to begin his sentence of incarceration, and (2) reconsideration of the Court's sentence.<sup>1</sup> The Government opposes both requests for the reasons that follow.

**1. The Government Opposes Defendant's Request for Thirty Additional Days to Report**

The Defendant has not provided the Court with any grounds that warrant delay of his sentence. Indeed, the Defendant made a number of misrepresentations in his letter to the Court that require correction.

New management has already been put in place at eShowings; according to an email eShowings sent to its clients (attached hereto as Exhibit A), eShowings has been under new management since the Defendant "resigned" on October 7, 2013. Even assuming that the Defendant has some role in the management transition, and assuming that the company has lost business since eShowings' clients heard that the Defendant pled guilty to multiple felonies, the company's bank records demonstrate that since his

<sup>1</sup> The Defendant filed the letter *pro se* despite the fact that counsel has not withdrawn his appearance.

sentencing the Defendant continues to use company money for personal expenses.

According to eShowings' recent bank records in October and November (attached hereto as Exhibits B and C, respectively, and filed under seal), the Defendant continues to exacerbate the company's precarious financial position. The Defendant wrote company checks totaling almost \$10,000 during the month of October made payable to himself, his attorney and his wife. See Exhibit B at p. 27. He also used an eShowings debit card to conduct transactions at the Dover Downs Casino on October 21, 2013 and the Tropicana Casino in Atlantic City on October 27, 2013. See Exhibit B at pp. 4, 5. Finally, he paid for a trip to San Francisco using eShowings' funds on November 14, 2013 – a trip that a source within the company claims is not business-related. See Exhibit C at p. 5.

In addition, the company continues to bounce checks, including employee paychecks, as is evident throughout the attached bank statements. One recent check that bounced was the company's check for its employees' payroll taxes, submitted through Paychex on November 12, 2013. See Exhibit C at 11. According to a source within the company, since the Defendant's sentencing on October 4, 2013, eShowings has not paid its rent, or other liabilities, nor has it paid its employees' premiums for various types of insurance (which are deducted from employees' pay and are being pocketed by the company). The defendant's statement in his letter to the Court that eShowings is "continuing to pay our weekly liabilities in full each and every week" is demonstrably false. The sooner the Defendant begins his sentence, the sooner new management can attempt to undo the damage the Defendant has caused.

The Defendant also requests additional time to report for his sentence of incarceration so that he can be present for various family obligations. The Government submits that this is not a valid reason to delay incarceration.

Because the Defendant has not demonstrated any good cause for a delay in his reporting date, and instead has again repeatedly misstated eShowings' financial status in his letter, the Government respectfully requests that his letter Motion be denied.

## **2. The Government Opposes Defendant's Request for Reconsideration**

The Court lacks jurisdiction to consider the Defendant's request. Absent circumstances inapplicable here, a district court may only modify a term of imprisonment once it has been imposed when "expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure." See 18 U.S.C. " 3582(c) & 3582(c)(1)(B). The defendant does not identify a statute that would permit the Court to reconsider his sentence (and the Government has found none).

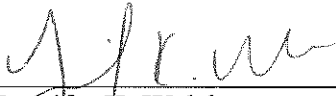
Furthermore, the Defendant may not request reconsideration under Rule 35 of the Federal Rules of Criminal Procedure. Rule 35(a) provides: "[w]ithin 14 days after sentencing the court may correct a sentence that resulted from arithmetical, technical, or other clear error." Fed. R. Crim. P. 35(a). By its plain language, Rule 35(a) does not provide the Court with authority to reconsider the defendant's sentence. Even assuming

that the Court made an “arithmetical, technical, or other clear error” in imposing sentence here, a district court may only correct such an error within 14 days after sentence is announced. Fed. R. Crim. P. 35(a) & (c). Here, sentence was announced on October 3, 2013. More than thirty days passed before the Defendant sent his letter requesting reconsideration. Because the Rule 35(a) time limitation is jurisdictional, the Court may not consider its sentence at this stage even if the Court had made an error – which the Court did not.<sup>2</sup> The Defendant’s request for reconsideration must be denied.

The Government respectfully requests that the Court deny the Defendant additional time to report for his sentence of incarceration, and deny the Defendant’s letter Motion for reconsideration of his sentence.

Respectfully submitted,

CHARLES M. OBERLY, III  
United States Attorney

BY:   
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Jennifer K. Welsh  
Assistant United States Attorney

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cc: Gregory J. Spadea, Esq.

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<sup>2</sup> In United States v. Higgs, after a detailed analysis of the purpose and history of Rule 35(a), as well as §3582(c)’s clear restriction on a district court’s authority, the Third Circuit held that the time limitation proscribed by Rule 35(a) is jurisdictional. Higgs, 504 F.3d 456, 459-65 (3d Cir. 2007).