

**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

**UNITED STATES OF AMERICA**

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Case No. 1:02CR00075

)

v.

)

**OPINION AND ORDER**

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**GERRY V. McCANN,**

)

By: James P. Jones

)

United States District Judge

Defendant.

)

*James C. Turk, Jr., Stone, Harrison & Turk, P.C., Radford, Virginia, for  
Defendant.*

The defendant has moved to modify his term of imprisonment previously imposed on the ground of extraordinary circumstances. Because the court has no power to make such a modification, the motion will be denied. I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

On December 9, 2002, the defendant was sentenced by this court to six months imprisonment, three years supervised release, and restitution in the amount of \$462,264.39. The defendant has filed a motion asking the court to modify his

sentence so that he would be able to return to his family and serve his remaining term of imprisonment in home detention.

“A district court is authorized to modify a Defendant’s sentence only in specified instances where Congress has expressly granted the court the jurisdiction to do so.” *United States v. Blackwell*, 81 F.3d 945, 947 (10th Cir. 1996). Congress has granted such authority in three limited circumstances: (1) upon motion of the Director of the Bureau of Prisons if “extraordinary and compelling reasons warrant such a reduction”; (2) “when expressly permitted by Rule 35”; and (3) when the defendant’s applicable guideline sentencing range has been subsequently lowered by the Sentencing Commission. 18 U.S.C.A. § 3582(c)(1)-(2) (West 2000 & Supp. 2003).

The defendant contends in his motion that the declining health of his daughter and her need for his care satisfies the extraordinary circumstances requirement of § 3582. However, for the court to consider a request for modification based on such circumstances, the motion must be made by the Director of the Bureau of Prisons and not by an inmate. *See Bouckhout v. United States*, No. 99-3391-KHV, 2000 WL 1469370, at \*1 (D. Kan. Sept. 22, 2000); *United States v. Girardi*, 971 F.Supp. 1203, 1204 (N.D. Ill. 1997); *United States v. Gore*, 933 F. Supp. 1018, 1019 (D. Kan.

1996), *aff'd*, No. 96-3106, 1997 WL 353025, at \*1 (10th Cir. June 26, 1997) (unpublished).

For the foregoing reasons, it is **ORDERED** that the defendant's Motion for Modification of Sentence [Doc. No. 8] is **DENIED**.

ENTER: April 30, 2003

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United States District Judge