

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS GARCIA-PARRA,

Defendant.

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ORDER

02-CR-0092-C-02

Defendant Luis Garcia-Parra has moved for modification of his sentence to make it consistent with that of his co-defendant, Magdalena Correa. The motion must be denied.

Once a court imposes a sentence, it loses authority to modify the sentence, except in very limited respects and then only within 7 days of sentencing. Fed. R. Civ. P. 35(a). Defendant did not file his motion until May 30, 2003; the judgment and commitment order was entered on February 18, 2003.

The only way in which a sentencing court can modify a sentence after it has been imposed is on remand from the court of appeals or upon motion by the government made within one year of sentencing. Fed. R. Civ. P. 35(b). Defendant has filed an appeal from his sentence. He is free to argue on appeal his claim that it was error for the court to find that

he qualified for a four-level upward adjustment for his role in the offense because he led or organized five or more persons and the conspiracy was otherwise extensive, when I found at the sentencing of his co-defendant, Magdalena Correa, that the conspiracy did not involve five or more persons. If the court of appeals agrees with defendant, it will remand the case for re-sentencing. Unless and until that happens, I have no authority to act on defendant's motion.

ORDER

IT IS ORDERED that defendant Luis Garcia-Parra's motion for modification of his sentence is DENIED for lack of jurisdiction.

Entered this 1st day of August, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge