

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 12a1148n.06

No. 11-6559

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 05, 2012
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
v.)	THE MIDDLE DISTRICT OF
)	TENNESSEE
KEVIN WHITAKER,)	
)	
Defendant-Appellant.)	

Before: MARTIN and WHITE, Circuit Judges; ECONOMUS, District Judge.*

PER CURIAM. Kevin Whitaker, a pro se federal prisoner, appeals a district court order denying his motion filed pursuant to Federal Rules of Civil Procedure 60(b)(6).

In 2001, Whitaker pleaded guilty to conspiracy to possess with the intent to distribute cocaine and conspiracy to commit money laundering. A probation officer prepared a presentence report, calculating Whitaker’s total offense level as thirty-eight and his criminal history category as II. Whitaker objected to the probation officer’s criminal history computation, asserting that he would soon be eligible for expungement of a prior conviction, which would result in a reduction of his criminal history category from II to I. Pursuant to USSG § 5K1.1, the government moved for a downward departure based on Whitaker’s substantial assistance. The government stated that the parties agreed to jointly recommend a sentence of 151 months of imprisonment and that Whitaker agreed to withdraw his objections to the presentence report. Whitaker withdrew his objections and

*The Honorable Peter C. Economus, United States Senior District Judge for the Northern District of Ohio, sitting by designation.

the district court granted the government's motion for a downward departure. The district court subsequently sentenced Whitaker to 151 months of imprisonment.

Whitaker moved for reconsideration of his sentence, and the district court denied the motion. He then filed a motion asking the district court to review and reduce his sentence, which the district court denied. Whitaker next filed an application for a certificate of appealability, which the district court also denied. More than six years later, Whitaker filed a motion asking the district court to reclassify him as having a criminal history category of I. The district court denied the motion and we affirmed this decision. *See United States v. Whitaker*, No. 09-6312 (6th Cir. Sept. 23, 2010). Whitaker subsequently filed the instant Rule 60(b)(6) motion, and the district court denied the motion.

We review the district court's denial of a Rule 60(b) motion for an abuse of discretion. *Jones v. Ill. Cent. R.R. Co.*, 617 F.3d 843, 850 (6th Cir. 2010). The district court did not abuse its discretion when it denied Whitaker's Rule 60(b) motion because Rule 60(b) is not applicable to criminal proceedings. Fed. R. Civ. P. 1. The district court's order denying the Rule 60(b) motion is affirmed.