

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
-against-	:	18cr602 (WHP)
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MICHAEL COHEN,	:	<u>MEMORANDUM & ORDER</u>
	:	
Defendant.	:	
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WILLIAM H. PAULEY III, Senior United States District Judge:

Michael Cohen purports to move under Rule 35(b) of the Federal Rules of Criminal Procedure to reduce or modify his sentence. Specifically, Cohen seeks to reduce his sentence to 12 months and one day of imprisonment, or alternatively, to modify his sentence so that the balance of his 36-month term is served on home confinement.

The fatal flaw in Cohen’s motion is that only the prosecutor can file a Rule 35(b) motion. And the Government’s decision not to file such a motion is entitled to considerable deference. United States v. Scarpa, 861 F.3d 59, 69 (2d Cir. 2017) (“In sum, when the U.S. Attorney has refused to make a Rule 35(b) motion for reasons that are not invidious or unrelated to a legitimate government concern, it is not the office of the court to weigh the equities or reassess the facts underlying the government’s exercise of its discretion.”). Stated differently, courts second guess the government’s refusal to file a Rule 35(b) motion only where the government acted with an unconstitutional motive or where its refusal was not rationally related to a legitimate government end. See Scarpa, 861 F.3d at 68 (collecting cases).

On December 12, 2018, this Court sentenced Cohen principally to 36 months of imprisonment for various financial crimes, campaign finance crimes, and making false

statements to Congress. After his sentencing, Cohen sought to proffer with the United States Attorney's Office for the Southern District of New York in the hope of obtaining a reduction of his sentence. As the Government's memorandum in opposition makes clear, Cohen made material and false statements in his post-sentencing proffer sessions.

Unable to articulate how he advanced any investigation or prosecution, Cohen and his surrogates make extravagant allegations that the Department of Justice—from the Attorney General down to line prosecutors—acted in bad faith. Those ad hominem attacks lack any substance and do not trigger the right to a remedy or a hearing before this Court. The Government acted well-within its discretion in deciding that Cohen's false statements and efforts to minimize his own wrongful conduct justified the Government's decision to cease any consideration of a Rule 35(b) application on his behalf. It is not within this Court's purview to review that determination.

Apparently searching for a new argument to justify a modification of his sentence to home confinement, Cohen now raises the specter of COVID-19. (ECF No. 69.) That Cohen would seek to single himself out for release to home confinement appears to be just another effort to inject himself into the news cycle. As the Government points out, he is "manifestly ineligible" for compassionate release and has not exhausted his administrative remedies. (ECF No. 70.)

Ten months into his prison term, it's time that Cohen accept the consequences of his criminal convictions for serious crimes that had far reaching institutional harms. For these reasons, Cohen's application to reduce or modify his sentence is denied.

Dated: March 24, 2020
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.