

FILED

FEB 19 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDWARD MICHAEL PHILLIPS, aka
Mikey,

Defendant - Appellant.

No. 14-10487

D.C. No. 1:11-cr-00581-LEK-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Leslie E. Kobayashi, District Judge, Presiding

Argued and Submitted February 12, 2016
Honolulu, Hawaii

Before: GRABER, BYBEE, and CHRISTEN, Circuit Judges.

Defendant Edward Michael Phillips appeals the district court's denial of his motion to compel the government to file a motion for further sentencing reduction under Federal Rule of Criminal Procedure 35(b). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Having reviewed the entire record, we conclude that the government's amended sentencing motion was intended to replace its original sentencing motion entirely. Accordingly, any statements in the original motion do not bind the government, even if the statements were otherwise binding. It is clear from the face of the amended motion that the government did not act in bad faith, arbitrarily, or for an impermissible reason. Wade v. United States, 504 U.S. 181, 185–87 (1992); United States v. Murphy, 65 F.3d 758, 762 (9th Cir. 1995). It was rational for the government to conclude that Defendant is not entitled to a further sentencing reduction; in the interim, the government learned that Defendant had stolen drugs while a cooperating informant.

AFFIRMED.