

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 10 2018

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SEPASITIANO FEAO,

Defendant-Appellant.

No. 16-10502

D.C. No.

4:14-cr-00533-JST-1

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Argued and Submitted December 6, 2017
San Francisco, California

Before: REINHARDT ** and SCHROEDER, Circuit Judges, and ELLIS,***
District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** This case was submitted to a panel that included Judge Kozinski, who recently retired. Following Judge Kozinski's retirement, Judge Reinhardt was drawn by lot to replace him. Ninth Circuit General Order 3.2.h. Judge Reinhardt has read the briefs, reviewed the record, and listened to oral argument.

*** The Honorable Sara Lee Ellis, United States District Judge for the Northern District of Illinois, sitting by designation.

Defendant-Appellant Sepasitiano Feao (“Feao”) appeals from the district court’s order denying his motion to reconsider his sentence. Our appellate jurisdiction rests on 28 U.S.C. § 1291, and we **AFFIRM**.

Feao’s plea agreement contained a broad waiver of appeal rights, and even if this appeal were not waived, the district court lacked jurisdiction to modify his sentence. A district court may correct a sentence resulting from “arithmetical, technical, or other clear error,” but only “[w]ithin 14 days after sentencing.” FED. R. CRIM. P. 35(a). Rule 35 defines “sentencing” as “the oral announcement of the sentence.” FED. R. CRIM. P. 35(c). A sentence is final when there’s a “formal break in the proceedings from which to logically and reasonably conclude that sentencing had finished.” *United States v. Ochoa*, 809 F.3d 453, 458–59 (9th Cir. 2015) (citation omitted). Rule 35(a)’s 14-day window is jurisdictional. *See United States v. Aguilar-Reyes*, 653 F.3d 1053, 1056 (9th Cir. 2011).

Because “a recommendation to the Bureau of Prisons is not part of a sentence,” Feao’s sentence was final after his first sentencing hearing on July 22, 2016. *United States v. Ceballos*, 671 F.3d 852, 855 (9th Cir. 2011). The district court therefore correctly concluded it lacked jurisdiction to entertain Feao’s November 3, 2016 motion to modify his sentence.

AFFIRMED.