

Signed 7-1-96

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

NORMAND R. GAGNE,

Defendant

Criminal No. 94-52-P-C

GENE CARTER, Chief Judge

MEMORANDUM OF DECISION AND ORDER DENYING
DEFENDANT'S MOTION TO COMPEL GOVERNMENT
TO FILE MOTION FOR REDUCTION OF SENTENCE

Before the Court for action at this time is Defendant's Motion to Compel Government to File Motion for Reduction of Sentence (Docket No. 35). The Court has conducted a hearing on June 28, 1996, on the Court's Order of May 10, 1996, allowing a hearing "limited to the purpose of adducing evidence describing the nature and extent of Defendant's alleged conduct occurring after imposition of his sentence herein which he claims to constitute substantial assistance to the Government." Order on Defendant's Motion to Compel (Docket No. 39), emphasis in original.

Defendant was sentenced on March 30, 1995, to a term of forty months of incarceration. See Sentencing Judgment (Docket No. 31).¹ In the sentencing proceedings, the Government moved

¹The original Judgment was amended by entry, on April 5, 1995, of an Amended Sentencing Judgment.

for a downward departure from the Guideline range provided for a term of incarceration in consequence of Defendant's cooperation with and assistance to the Government prior to sentencing. The Court granted the motion. Indeed, the Court departed by five months more than was recommended by the Government. Defendant was permitted to self-report on May 1, 1995, to commence execution of the sentence of incarceration. Defendant remained at large for that period on conditions of release secured by bail.

The basis for the pending motion is Defendant's assertion that the Government made an oral commitment to him "that the Defendant's continued cooperation after sentencing, if substantial, would result in the Government's filing of a motion for a reduction of sentence under Rule 35" Memorandum in Support of Motion to Compel Government to File Motion for Reduction of Sentence (Docket No. 36) at 1.²

Defendant puts forth three principal bases for a finding of substantial assistance postdating his sentencing and warranting the Government being forced to comply with the alleged commitment:

²The Government takes the position that the Court is without jurisdiction to reduce Defendant's sentence unless the Government actually files a motion under Rule 35. Fed. R. Crim. P. 35(b); see United States v. Valle, 929 F.2d 629, 633 n.4 (11th Cir.), cert. denied, 502 U.S. 950 (1991). This issue need not be addressed here because the commitment of the United States Attorney which Defendant seeks to enforce is limited to Defendant's substantial assistance rendered to the Government after his sentencing. The record does not reflect, the Court finds, the rendition of any substantial assistance to the Government after Defendant's sentencing on March 30, 1995. For that reason, Defendant is not entitled to the relief sought, even if the Court should ultimately decide that it has jurisdiction to provide relief.

- (1) his return to Maine after commencement of the execution of his sentence and held for five and one-half months at the Cumberland County Jail so that he would be available as a witness in proceedings against his brother, James Gagne;
- (2) his recruitment of Bonnie Milhomme as a source of information and a grand jury witness in respect to the criminal activities of James Gagne and the conspiracy of which Defendant was convicted; and
- (3) his active cooperation with Massachusetts authorities with respect to drug trafficking conduct of other people.

The Court FINDS that none of these asserted activities provided "substantial assistance" to the Government and that the decision of the United States Attorney's Office to that effect is in no way erroneous. By his agreement with the Government prior to sentencing, for which he received departure consideration at the time of sentencing on March 30, 1995, Defendant was obligated to testify at the request of the Government at any time. Government Exhibit 1, at 3, ¶ 4. His return to Maine and detention at the Cumberland County Jail in order that he could be available for that purpose, to which he made no objection, was simply in execution of that prior commitment. He never was called to testify and, therefore, rendered no substantial assistance to the Government by the giving of testimony after his sentencing.

While most of his active interrelations with Bonnie Milhomme, to the end of persuading her to provide information and testimony to the Government, occurred after his sentencing, and she, in fact, testified to the grand jury only after sentencing, the record is clear that she provided no information that she did not receive from what Defendant had told her about the criminal

activities in question and had, in fact, already provided to the Government himself. There was no other significant benefit to the Government resulting from her availability as a source of information and a witness. Her contribution was not substantial assistance.

The record makes it abundantly clear that the investigatory and prosecutorial authorities who dealt with Defendant in respect to his assistance to Massachusetts authorities have all concluded, for good reason, that Defendant rendered to them no substantial assistance after his sentencing. There is no reason to doubt the validity of these judgments. Defendant's own description of the alleged activities, on which he relies, and of the scope and nature of those activities is very vague. Nothing in the record displays any benefit that accrued to the Government as a result of his activities with the Massachusetts authorities.

Accordingly, the subject motion is hereby DENIED.

GENE CARTER
Chief Judge

Dated at Portland, Maine this 1st day of July, 1996.