

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 17, 2012

No. 11-60604

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

KEVIN COE,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 2:10-CR-78-7

Before KING, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Pursuant to his guilty plea to conspiracy to commit wire fraud, Kevin Coe was sentenced on 24 August 2011 to, *inter alia*, 92-months imprisonment. He filed a notice of appeal contesting the sentence; a judgment, however, was never entered.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Without objection from the Government, the district court re-sentenced Coe on 29 September 2011 to, *inter alia*, 80-months imprisonment. Judgment was entered on 11 October 2011.

Although raised by neither party, the district court lacked jurisdiction to re-sentence Coe. This court must examine *sua sponte* the basis of its own jurisdiction. *United States v. West*, 240 F.3d 456, 458 (5th Cir. 2001).

Within 14 days of sentencing, a district court may “correct a sentence that resulted from arithmetical, technical, or other clear error”. FED. R. CRIM. P. 35(a). This time limit is jurisdictional and strictly construed. *United States v. Lopez*, 26 F.3d 512, 518-23 (5th Cir. 1994) (district court lacked jurisdiction to reconsider sentence outside Rule 35 time limit).

Therefore, under Rule 35(a), the district court had until 7 September 2011 to correct or modify Coe’s original sentence; it lacked jurisdiction, however, to re-sentence him on 29 September 2011. Accordingly, the later-imposed sentence and its corresponding entry of judgment are void.

Because judgment as to Coe’s original sentence was never entered on the criminal docket, he had no judgment from which to appeal. FED. R. APP. P. 4(b)(1)(A) (defendant must appeal within 14 days of entry of judgment); FED. R. APP. P. 4(b)(6) (judgment entered for purposes of Rule 4(b) when entered on criminal docket). Entry of judgment as to Coe’s 24 August 2011, original sentence will perfect his appeal. FED. R. APP. P. 4(b)(2) (notice of appeal filed after announcement of sentence, but before entry of judgment, is treated as filed on date entry occurs).

DISMISSED FOR LACK OF JURISDICTION.