

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5206  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MONDEE STRACENER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 85-CR-51(2)  
- - - - -  
August 17, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Mondee Stracener challenges the district court's denial of his motion to reduce sentence brought under Fed. R. Crim. P. 35(b). The denial of a Rule 35 motion is reviewed for illegality or abuse of discretion. United States v. Kirkland, 853 F.2d 1243, 1246 (5th Cir. 1988). Stracener does not contest the legality of his sentence, but argues that he received a more severe sentence upon resentencing because he received a higher percentage of the maximum possible sentence.

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The maximum sentence he could have received as a result of his original conviction for aiding and abetting armed bank robbery was 25 years. 18 U.S.C. § 2113(d). He received a 20-year term of incarceration, which was 80 percent of the maximum. Upon resentencing, the maximum sentence he could have received, and actually did receive, for his aiding and abetting simple bank robbery conviction, was 20 years; 100 percent of the maximum. 18 U.S.C. § 2113(a).

Stracener was not sentenced based upon a percentage of the maximum possible sentence. Instead, he was sentenced to a finite period. That period did not increase upon resentencing, and the duration of his sentence remained unchanged. The district court's denial of his Rule 35(b) motion was not an abuse of discretion, and its order is AFFIRMED.