

THE COURT: Well, I'm going to revoke the supervised release, and I am going to give him a period of incarceration, but I'll leave open to you to address the length of it. I have a ten month period which is probably a bit long, but that'll be the sentence today and you can be in touch with me about any minimization of that. There won't be any fine or any special assessment. You got to get off that monkey. Get that monkey off your back.

DEFENSE COUNSEL: There's no additional supervised release after that?

THE COURT: No.

DEFENSE COUNSEL: Judge, can I be heard on a few things? First of all, the idea - I appreciate the Court's invitation to me to come back at a later time to minimize the sentence. I think the Court is exercising what it believes is giving the Defendant a fair shot or me a fair shot to do that. I think the problem is I can't do it. I can't come back to it at a later time.

THE COURT: I don't think I left that door open, no. I put this on and I'm hopeful that this would do the job for Mr. Rosa. It's harsher than was anticipated by him or you, and maybe a little more than needed, but we've got to get you off that trap. So --

DEFENSE COUNSEL: Judge, I guess what I was trying to articulate and I wasn't doing it very well is, the Court said you'll leave open to me the change to come back to you and attempt to reduce that. Say I come back in three months and I report that he's at [FCI] McKean [correctional institution] and doing very well, and the Court has in its mind okay, he's done well, I'm gonna reduce it from ten months to four months or five months, I don't think you have jurisdiction to do that. So what the Court's saying now in essence becomes an illegal sentence, because it's something that the Court doesn't have the power to effectuate or follow-up on. [Federal] Rule [of Criminal Procedure] 35 only let's us come back in seven days.

THE COURT: All right. Your argument is very persuasive. There will be no opportunity to come back.

DEFENSE COUNSEL: All right. So then I guess the issue, is, Judge, the issue is because the Court said this is harsher than necessary -

THE COURT: It is.

DEFENSE COUNSEL: - it should be a lesser sentence than 10 months.

THE COURT: It's going to be ten months. You got to fix that.

(Emphasis added.)