

APPENDIX 2

FILED

MAR 05 2019

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARK A. BLANKENSHIP,

Defendant-Appellant.

No. 18-10056

D.C. No.

1:12-cr-00641-JMS-1

ORDER*

Appeal from the United States District Court
for the District of Hawaii
J. Michael Seabright, Chief Judge, Presiding

Submitted February 15, 2019**
Honolulu, Hawaii

Before: TALLMAN, BYBEE, and N.R. SMITH, Circuit Judges.

In 2012, Mark Blankenship entered a guilty plea for violating the Hobbs Act, 18 U.S.C. § 1951. He appeals the district court's grant of a Rule 35(b) motion to reduce his sentence.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1. “Although neither party raised the issue of our jurisdiction to entertain this appeal, we have a duty to consider it sua sponte.” *Symantec Corp. v. Glob. Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009). Appealing a decision on a Rule 35(b) motion must proceed under 18 U.S.C. § 3742. *United States v. Tadio*, 663 F.3d 1042, 1045 (9th Cir. 2011). Under 18 U.S.C. § 3742(a)(1), we have jurisdiction to correct a sentence “imposed in violation of law.” Unless the defendant appeals a question of law, we have no jurisdiction over the appeal. “If the district court has stated the correct legal standard when reducing a sentence under Rule 35(b), we have no appellate jurisdiction to review its decision.” *Tadio*, 663 F.3d at 1053.

The district court here stated the correct legal standard. *See id.* at 1045, 1052. Accordingly, “we lack jurisdiction to review the court’s exercise of its discretion in choosing the amount of the sentence reduction awarded.” *See id.* at 1045.

This appeal is **DISMISSED**.¹

¹ The pending motion is denied. (Docket No. 52).