

DLD-007

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1844

UNITED STATES OF AMERICA

v.

GREGORY MAKOZY, SR.,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Criminal Action No. 2:15-cr-00184-001)
District Judge: Honorable Arthur J. Schwab

Submitted on Appellee's Motion for Summary Action, and
for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) and
Possible Summary Action Pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6
October 10, 2024
Before: RESTREPO, FREEMAN, and NYGAARD, Circuit Judges

(Opinion filed: October 18, 2024)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

“dismissed all the charges against [him].” Dist. Ct. Dkt. No. 182, at 1. In support of this claim, Makozy pointed to the fact that his six-page amended judgment of sentence included the following text: “Count(s) 1-5, and 6-10 . . . are dismissed on the motion of the United States.” Dist. Ct. Dkt. No. 59, at 1.² **(Dist. Ct. Dkt. No. 182, at 2.)** On April 3, 2024, the District Court denied Makozy’s motion as erroneous. **(Dist. Ct. Dkt. No. 183.)** He subsequently moved to reconsider that decision. **(Dist. Ct. Dkt. No. 184.)** On April 25, 2024, the District Court denied reconsideration, indicating that the quoted text relied on by Makozy was merely a “typo.” See Dist. Ct. Dkt. No. 185. Makozy then filed this appeal, challenging the District Court’s latter decision.³ **(Dist. Ct. Dkt. No. 186.)**

II.

The transcript of Makozy’s sentencing hearing makes clear that the District Court sentenced him on Count 6. See Dist. Ct. Dkt. No. 66. To the extent that the District Court’s oral pronouncement at sentencing conflicts with his amended judgment of

² Makozy’s amended judgment of sentence was entered about a week after his original judgment of sentence. Both versions contain the above-quoted text. **(Dist. Ct. Dkt. No. 52, at 1; Dist. Ct. Dkt. No. 59, at 1.)**

³ We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We review the District Court’s denial of Makozy’s motion to reconsider for abuse of discretion, exercising de novo review over the District Court’s legal conclusions and reviewing its factual findings for clear error. See United States ex rel. Schumann v. Astrazeneca Pharms. L.P., 769 F.3d 837, 848 (3d Cir. 2014).

sentence, the former controls. See United States v. Perez-Colon, 62 F.4th 805, 807 n.1 (3d Cir. 2023). Accordingly, regardless of whether the above-quoted text from Makozy's amended judgment of sentence was a typographical error (it surely was), there is no merit to his claim that the District Court dismissed *all* counts against him. And since that indisputably meritless claim was the basis for his motion to expunge his criminal record, there was no reason for the District Court to reconsider its denial of that motion.⁴ See Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (explaining that reconsideration is warranted only if the movant shows that (1) there has been "an intervening change in the controlling law," (2) there is new evidence that bears on the district court's underlying decision, or (3) there is a "need to correct a clear error of law or fact or to prevent manifest injustice").

Because this appeal does not present a substantial question, we grant the Government's motion and will summarily affirm the District Court's judgment. See 3d Cir. I.O.P. 10.6. Makozy's motion for appointment of counsel is denied, as are his other, miscellaneous requests for relief.

⁴ To the extent that this appeal intended to include a direct challenge to the District Court's decision denying Makozy's motion to expunge, that challenge is meritless for the reasons discussed above. To the extent that his motion for reconsideration mentioned issues that did not bear on the question of whether to grant reconsideration, (**Dist. Ct. Dkt. No. 184, at 1-2**), he failed to establish that he was entitled to any relief with respect to those issues.

APPENDIX A

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October 10, 2024
Before: RESTREPO, FREEMAN, and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted on Appellee's motion for summary action, and for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and

possible summary action pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6, on October 10, 2024. On consideration whereof, it is now hereby

ORDERED and **ADJUDGED** by this Court that the judgment of the District Court entered April 25, 2024, be and the same hereby is **AFFIRMED**. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: October 18, 2024



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

04/03/2024	183	<p>ORDER denying <u>182</u> Motion to Set Aside Judgment as to GREGORY M. MAKOZY SR. (1); denying <u>182</u> Motion to expunge record as to GREGORY M. MAKOZY SR. (1). Defendant erroneously claims all charges against him were dismissed by this Court. As noted in the Court's Judgment <u>52</u> Defendant plead guilty to Count 6 of the Indictment and was sentenced based on his guilty plea. (Counts 1, 2-5, 7, 8, 9, and 10 were dismissed; but as to Count 6, Defendant was sentenced to a 30-month term of imprisonment to be followed by a 3-year term of supervised release.) Defendant attached the first page of the Judgment to his Motion which evidences this very fact. Signed by Judge Arthur J. Schwab on 15-184. Text-only entry; no PDF will issue. This Text-only entry constitutes the Order of the Court or Notice on the matter. (lmt) (Entered: 04/03/2024)</p>
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04/25/2024	185	<p>ORDER denying <u>184</u> Motion for Reconsideration re <u>182</u> MOTION to Set Aside Judgment MOTION to Expunge Record filed by GREGORY M. MAKOZY, SR. filed by GREGORY M. MAKOZY, SR. as to GREGORY M. MAKOZY SR. (1). This Court previously entered an Order <u>183</u> denying Defendant's Motion to Set Aside Judgment and Expunge Record <u>182</u> . Defendant's instant Motion for Reconsideration <u>184</u> failed to demonstrate at least one of the following grounds upon which this Court could reconsider its prior Order: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [made its decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. Max's Seafood Cafe ex rel. LouAnn, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (citation omitted). Based on the Max's Seafood Cafe case, Defendant attempted to demonstrate that this Court should correct a "clear error of law" by referencing to a typo on the cover page of his Amended Judgment <u>59</u> . As this Court explained in its previous Order <u>183</u> , "Defendant erroneously claims all charges against him were dismissed by this Court." As noted throughout the entirety of the Court's Judgment <u>52</u> and its Amended Judgment <u>56</u> , Defendant plead guilty to Count 6 of the Indictment and was sentenced based on his guilty plea. (Counts 1, 2-5, 7, 8, 9, and 10 were dismissed; but as to Count 6, Defendant was sentenced to a 30-month term of imprisonment to be followed by a 3-year term of supervised release.) In addition, this Court further directs Defendant to review his Sentencing Hearing transcript <u>66</u> , and in particular pages 5, 24, and 43 which further substantiate that Defendant (who pled guilty to Count 6 <u>33</u>), was sentenced to a 30-month term of imprisonment to be followed by a 3-year term of supervised release for concealment of Bankruptcy Assets in violation of 18 U.S.C. 157 at Count 6. Accordingly, this Court finds that Defendant has failed to meet any of the three bases for reconsideration of his prior Motion, and thus, the Court DENIES Defendant's Motion for Reconsideration. Signed by Judge Arthur J. Schwab on 4/25/2024. Text-only entry; no PDF will issue. This Text-only entry constitutes the Order of the Court or Notice on the matter. (lmt) (Entered: 04/25/2024)</p>
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Appellant

(D.C. No.: 2:15-cr-00184-001)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and ¹NYGAARD. Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: March 31, 2025
Amr/Cc: All counsel of record

¹¹ Judge Nygaard's vote is limited to panel rehearing only.

**Additional material
from this filing is
available in the
Clerk's Office.**