

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-2377

United States of America,

Appellee,

v.

Anthony R. West,

Appellant.

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Appeal from the United States
District Court for the
Western District of Missouri.
[UNPUBLISHED]

Submitted: December 7, 2005
Filed: December 16, 2005

Before WOLLMAN, FAGG, and ARNOLD, Circuit Judges.

PER CURIAM.

Federal prisoner Anthony West appeals the judgment of the district court¹ entered upon a motion by the government to reduce West's sentence under Federal Rule of Criminal Procedure 35 based on his substantial assistance. The court reduced West's sentence from 120 months to 90 months in prison.

West argues that the Assistant United States Attorney (AUSA) committed prosecutorial misconduct in connection with the Rule 35 motion by alleging that West

¹The Honorable Howard F. Sachs, United States District Judge for the Western District of Missouri.

had provided certain assistance, a disclosure that tarnished his reputation and threatened the lives of West and his family. We find that West has not shown any error, plain or otherwise, in the prosecutor's actions in connection with the Rule 35 resentencing. The AUSA recounted West's cooperation in order for West to receive a downward departure, not to put him in any danger, and West agreed at the resentencing hearing that he had provided the cooperation attributed to him. See United States v. Olano, 507 U.S. 725, 732-35 (1993) (plain error standard).

West's remaining claims are not properly before us, as they involve ineffective assistance of counsel--a matter for proceedings under 28 U.S.C. § 2255--or they relate to his original sentence and either were or could have been raised in his prior appeal. See United States v. Stuckey, 255 F.3d 528, 530-31 (8th Cir.) ("law of the case" doctrine governs issues decided in prior appeal), cert. denied, 534 U.S. 1011 (2001); United States v. Kress, 58 F.3d 370, 373 (8th Cir. 1995) (where party could have raised issue in prior appeal but did not, court later hearing same case need not consider matter). West's section 2255 motion is not the subject of this appeal.

The judgment is affirmed, and the motion to correct plain error is denied.
