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States Court of Appeals  
for the Third Circuit

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7-27-2009

## USA v. John McLean

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 08-2507

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UNITED STATES OF AMERICA,  
Appellant

v.

JOHN MCLEAN

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Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Criminal No. 04-cr-00408-001)  
District Judge: Honorable Edwin M. Kosik

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Submitted Under Third Circuit LAR 34.1(a)  
July 13, 2009

Before: RENDELL, FUENTES and ROTH, Circuit Judges.

(Filed: July 27, 2009)

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OPINION OF THE COURT

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RENDELL, *Circuit Judge*.

This appeal raises a single issue: whether a district court may reduce a defendant's sentence under 18 U.S.C. § 3582(c)(2), the statutory provision allowing a court to reduce a sentence which is "based on a sentencing range that has subsequently been lowered by

the Sentencing Commission,” when that sentence is imposed pursuant to a binding plea agreement. Concluding that enforcement of the stipulated sentence was not required, the District Court reduced defendant John McLean’s sentence; the government appealed.<sup>1</sup> We conclusively resolved the issue in *United States v. Sanchez*, holding, “If ‘binding’ is to have meaning, it cannot be undone by the discretionary possibility of a different sentence under § 3582(c).” 562 F.3d 275, 282 (3d Cir. 2009).

Here, McLean stipulated to the sentence imposed in a binding plea agreement under Fed. R. Crim. P. 11(c)(1)(c), the validity of which is undisputed. Accordingly, we will REVERSE the order of the District Court and REMAND the case.

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<sup>1</sup> The District Court had jurisdiction under 18 U.S.C. § 3231. We exercise jurisdiction pursuant to 18 U.S.C. § 1291.