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States Court of Appeals  
for the Third Circuit

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11-16-2015

## USA v. Sanjeev Srivastav

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 15-2737

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UNITED STATES OF AMERICA

v.

SANJEEV ANANT SRIVASTAV,  
Appellant

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Criminal No. 2-05-cr-00193-007)  
District Judge: Honorable Paul S. Diamond

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Submitted for Possible Dismissal Due to a Jurisdictional Defect or  
for Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

October 29, 2015

Before: FISHER, JORDAN and VANASKIE, Circuit Judges

(Opinion filed: November 16, 2015)

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OPINION\*

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PER CURIAM

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

Sanjeev Anant Srivastav appeals the District Court's order denying his motion requesting a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). For the reasons that follow, we will summarily affirm.

## I.

Following a trial, a jury found Srivastav guilty of seven counts related to his role in an illegal prescription drug enterprise. He received a sentence of 180 months, which was within the applicable Sentencing Guidelines range. The District Court subsequently reduced Srivastav's sentence to 156 months.

In May 2015, Srivastav filed a motion under 18 U.S.C. § 3582(c)(2). He sought to have his sentence reduced based on Amendment 782 to the U.S. Sentencing Guidelines, which lowered the base offense assigned to particular drug quantities. The District Court denied the motion after it considered the applicable law and determined the sentencing factors under § 3553(a) did not warrant a reduction. Srivastav appealed.

## II.

We begin with a question of appellate jurisdiction. The order denying Srivastav's motion to reduce his sentence was entered on June 24, 2015. He had 14 days, or until July 8, 2015, to file a notice of appeal. See Fed. R. App. P. 4(b)(1). Srivastav filed his notice of appeal on July 11, 2015, at the earliest. He has alleged that he did not receive the District Court's order until July 11, 2015, and that he filed his notice of appeal within

24 hours of receiving the order.<sup>1</sup> Srivastav asks us to exclude the time between the order's entry and his receipt of that order. In this case, we need not decide the question of the timeliness of Srivastav's notice of appeal, as the 14-day period for appeals in a criminal case is non-jurisdictional, see Virgin Islands v. Martinez, 620 F.3d 321, 328-29 (3d Cir. 2010), and the Government has not pressed the timeliness issue.

### III.

Because § 3582(c)(2) provides that a “court *may* reduce” the term of imprisonment, we review the District Court's denial for abuse of discretion. United States v. Styer, 573 F.3d 151, 153 (3d Cir. 2009). We may summarily affirm the decision of the District Court if no substantial question is presented on appeal. See 3d Cir. LAR 27.4 and I.O.P. 10.6. Section 3582(c)(2) requires courts to consider the applicable factors set forth in 18 U.S.C. § 3553(a), including, inter alia, the seriousness of the offense.

While finding Srivastav's post-sentencing conduct laudable, the District Court nonetheless declined to reduce his sentence. It noted that Srivastav, a doctor trained and licensed in India, participated in a massive international conspiracy to introduce prescription drugs and controlled substances into interstate commerce by selling drugs online to consumers without a prescription. The District Court concluded Srivastav's behavior was extremely serious, extending over two years and generating millions of

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<sup>1</sup> We apply the prison mailbox rule, Houston v. Lack, 487 U.S. 266, 270-72 (1988), and credit Srivastav's statement that he gave his notice of appeal to prison staff within 24 hours of receiving the District Court's order.

dollars in illegal proceeds. After reviewing Srivastav's motion in the District Court and his filing in this Court, which makes reference to general policy concerns about lengthy drug sentences, we determine that the District Court did not abuse its discretion in denying Srivastav's motion.

#### IV.

Therefore, we will summarily affirm the District Court's order denying Srivastav's motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). We deny Srivastav's motion for an expedited briefing schedule as moot.