

EXPEDITED

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-16479
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 22, 2005 THOMAS K. KAHN CLERK

D. C. Docket No. 90-06036-CR-JAG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GABRIEL ALVARO SCAFF-MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(June 22, 2005)

Before BLACK, WILSON and PRYOR, Circuit Judges.

PER CURIAM:

Gabriel Alvaro Scaff-Martinez appeals the district court's November 10, 2004, order denying his § 3582(c)(2) motion for reduction of sentence. A district

court does not have jurisdiction to rule in a case that is on appeal, despite a decision by our court, until a mandate has been issued. *Zaklama v. Mount Sinai Med. Ctr.*, 906 F.2d 645, 649 (11th Cir. 1990). We did not issue our mandate as to the initial appeal of Appellant's § 3582 motion until November 16, 2004. Therefore the district court lacked jurisdiction to enter its November 10, 2004 order. Appellant's filing of a motion for reconsideration in the district court on November 22, 2004, does not cure the district court's initial jurisdictional deficiency. Accordingly, the district court's orders of November 10, 2004 and February 3, 2005 are **VACATED**.