Court of Appeals
of the State of Georgia

ATLANTA, January 05, 2017

The Court of Appeals hereby passes the following order:

A17D0204. ANTWAN SMITH v. THE STATE.

Antwan Smith filed this discretionary application from the trial court's order denying his motion to modify his sentence. According to Smith, the trial court abused its discretion in failing to modify his sentence to give him credit for time served.

A sentencing court may modify a sentence within one year of its imposition or within 120 days after remittitur following a direct appeal, whichever is later. See OCGA § 17-10-1 (f)*; Frazier v. State*, 302 Ga. App. 346, 347-348 (691 SE2d 247) (2010). The denial of a timely motion to modify under OCGA § 17-10-1 (f) is subject to direct appeal. See, e. g., *Anderson v. State*, 290 Ga. App. 890 (660 SE2d 876) (2008); *Maldonado v. State*, 260 Ga. App. 580 (580 SE2d 330) (2003). This Court will grant a timely discretionary application if the lower court's order is subject to direct appeal. See OCGA § 5-6-35 (j). Accordingly, this application is hereby GRANTED. Smith shall have ten days from the date of this order to file a notice of appeal with the trial court if he has not already done so. See OCGA § 5-6-35 (g). The clerk of the superior court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 01/05/2017

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen , *Clerk.*