

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. AMILCAR C. BUTLER, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
2018 U.S. App. LEXIS 27125
No. 18-5374
September 20, 2018, Filed

Notice:

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Editorial Information: Subsequent History

Rehearing, en banc, denied by United States v. Butler, 2018 U.S. App. LEXIS 32320 (6th Cir., Nov. 14, 2018)

Editorial Information: Prior History

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE. United States v. Butler, 137 Fed. Appx. 813, 2005 U.S. App. LEXIS 12341 (6th Cir.) (6th Cir. Tenn., June 22, 2005)

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Amilcar C. Butler, Defendant - Appellant, Pro se, Yazoo City,
MS.

Judges: Before: ROGERS, KETHLEDGE, and NALBANDIAN, Circuit Judges.

Opinion

ORDER

Amilcar C. Butler, a federal prisoner proceeding pro se, appeals the district court's order granting his motion to correct a clerical error in the record, filed pursuant to Federal Rule of Criminal Procedure 36. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

In 2002, a jury found Butler guilty of conspiracy to possess with intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846; and attempt to possess with the intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. § 846. The district court sentenced him to a term of life imprisonment. We affirmed. *United States v. Butler*, 137 F. App'x 813 (6th Cir. 2005). In 2016, President Barack Obama commuted Butler's sentence to a 240-month term of imprisonment.

In 2018, Butler filed a "Petition to Correct a Clerical Error in the Verdict Form under Fed. R. Crim. P. 36." In his filing, Butler asserted that there was a discrepancy between his indictment, verdict form,

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and judgment—namely, his indictment and verdict form listed the relevant statutory provision for his charge for attempted possession of cocaine as being § 846, but his judgment listed the relevant statutory provision as being § 841. He argued that this discrepancy amounted to a "clerical error in the judgment and/or verdict form that needs to be correct[ed]." The district court granted the motion and, in the same order, amended Butler's judgment to reflect that his conviction for attempted possession of cocaine constituted a violation of § 846.

On appeal, Butler argues that the district court erred by failing to enter a separate amended judgment and/or by failing to amend his verdict form.

The government argues that Butler has waived appellate review by appealing the outcome he sought before the district court—namely, a correction to the record. See *Simms v. Bayer Healthcare, LLC (In re Bayer Healthcare)*, 752 F.3d 1065, 1072 (6th Cir. 2014) ("Thus, because the plaintiff agreed with the judge's course of conduct, he waived his right to later charge the court with error in following that course of conduct."). For the same reason, the government contends that Butler lacks standing to pursue this appeal. See *United States v. Bergrin*, 885 F.3d 416, 419-20 (6th Cir. 2018). To the extent that the district court attempted but failed to correct an error in the record, which Butler appears to allege, Butler would not have waived his appeal and would have standing, and we will therefore address the merits of Butler's appeal.

Pursuant to Rule 36, a court "may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." Fed. R. Crim. P. 36. "Although the federal rules do not define what constitutes a clerical error, this court has held that 'a clerical error must not be one of judgment or even of misidentification, but merely of recitation, of the sort that a clerk or amanuensis might commit, mechanical in nature.'" *United States v. Robinson*, 368 F.3d 653, 656 (6th Cir. 2004) (quoting *United States v. Coleman*, No. 99-5715, 2000 U.S. App. LEXIS 21239, 2000 WL 1182460, at *2 (6th Cir. Aug. 15, 2000)). We generally review a district court's ruling on a Rule 36 motion for clear error. See *Coleman*, 2000 U.S. App. LEXIS 21239, 2000 WL 1182460, at *1.

Butler argues that the district court did not actually correct the record because the court failed to issue a separate amended judgment after granting his motion. But Butler does not cite any authority that would suggest that the court had such an obligation; he does cite Federal Rule of Civil Procedure 58(a), but that provision does not apply in criminal proceedings.

Butler also claims that the district court should have amended his verdict form to include citations to §§ 841 and/or 2. But the verdict form cited § 846 for both of Butler's charged offenses, which was the relevant statutory provision in light of the fact that Butler was charged with attempt and conspiracy. To the extent that the court erred by failing to also include references to §§ 841 and/or 2, Butler has not clearly explained how the court's failure to correct that error warrants reversal. See, e.g., *United States v. Jingles*, No. 2:98-cr-0431KJM, 2018 U.S. Dist. LEXIS 41324, 2018 WL 1305786, at *2 (E.D. Cal. Mar. 13, 2018) ("Even clerical errors falling within Rule 36's ambit do not automatically warrant correction unless they impact the defendant in a meaningful way."). The court otherwise corrected the only clear error in the record—the sole citation to § 841 in count two of Butler's amended judgment.

For the foregoing reasons, Butler has not demonstrated that the district court clearly erred when it granted his Rule 36 motion, and we therefore **AFFIRM** the district court's order.

