

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-15037
Non-Argument Calendar

D.C. Docket No. 1:95-cr-00176-JB-S-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGES MICHEL,

Defendant-Appellant.

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

(June 22, 2020)

Before BRANCH, LAGOA, and EDMONDSON, Circuit Judges.

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total offense level of 41 and a criminal history category of IV, Michel's guidelines range was calculated as 360 months to life imprisonment. The district court sentenced Michel to 400 months' imprisonment on each count, to run concurrently.

On appeal, we reversed Michel's conviction for Count Ten. We also vacated Michel's sentences for the remaining counts and remanded for resentencing in the light of the Supreme Court's decision in Appendi v. New Jersey, 530 U.S. 466 (2000).

During the resentencing proceedings, the court relied on the original PSI and applied the same guidelines calculations made at the original sentencing hearing. The resentencing court found that Michel was responsible for more than 150 kilograms of cocaine. The resentencing court also applied the same three-level role enhancement that it had applied during Michel's original sentencing. The sentencing court then imposed a total sentence of 360 months' imprisonment: 240 months for Count One to run consecutive to 120-month concurrent sentences for Counts Two, Four, Five, and Six. The sentencing court also granted the government's motion to dismiss Count Ten. We affirmed Michel's new sentence on direct appeal.

The district court denied Michel's Rule 36 motion. The district court concluded that because Michel sought a substantive alteration to his sentence (not merely the correction of a clerical error), Rule 36 did not fit his purpose. The district court also concluded that venue was not proper for consideration of Michel's request for relief under section 2241.

II. Discussion

We review de novo the district court's application of Rule 36. United States v. Davis, 841 F.3d 1253, 1261 (11th Cir. 2016).

Rule 36 allows a district court to "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. We have stressed "that Rule 36 may not be used to make a substantive alteration to a criminal sentence." See Davis, 841 F.3d at 1261; United States v. Portillo, 363 F.3d 1161, 1164 (11th Cir. 2004). Instead, Rule 36 is a remedy to correct errors that are "minor and mechanical in nature." Portillo, 363 F.3d at 1165.

Here, Michel's Rule 36 motion asked the district court to remove from the PSI facts about Michel's conduct underlying Count Ten and the resulting three-

motion and had obtained no authorization from this Court to file yet another section 2255 motion. See Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003) (“Without authorization, the district court lacks jurisdiction to consider a second or successive petition.”).

AFFIRMED.³

³ In his appellate brief, Michel argues that the resentencing court exceeded its authority on remand to make a new drug-quantity finding and also violated Apprendi. We addressed and rejected these arguments on direct appeal from Michel’s new sentence; we will not revisit those issues in this appeal. For background, see Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1289, 1291-92 (11th Cir. 2005) (“Under the law-of-the-case doctrine, the resolution of an issue decided at one stage of a case is binding at later stages of the same case.” (alteration omitted)).

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-15037-DD

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

GEORGES MICHEL,

Defendant - Appellant.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before BRANCH, LAGOA, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

v.

GEORGES MICHEL,

Defendant.

CRIMINAL ACTION NO. 95-00176-JB

ORDER

This action is before the Court on the Defendant Georges Michel's Motion to Correct Clerical Error Pursuant to FRCP 36. (Doc. 820). The United States has filed a brief in opposition (Doc. 823) and this matter is now ripe for disposition.

I. Background.

Georges Michel was convicted by a jury on March 20, 1998. (Doc. 320). Mr. Michel's Presentence Investigation Report was completed on April 27, 1998. (Doc. 825). On July 13, 1999, Michel was sentenced to 400 months in the custody of the United States Bureau of Prisons. (Doc. 508). Michel appealed and the Eleventh Circuit reversed his conviction on Count 10 of the second superseding indictment, vacated his sentence and remanded the case for resentencing. (Doc. 556).

On December 18, 2001, this Court resentenced Mr. Michel to a term of 360 months, consisting of 240 months as to Count 1 and 120 months as to Counts 2, 4, 5 and 6 to run concurrently. (Doc. 633). At resentencing, the Court relied upon the original Presentence Investigation Report and applied the same guidelines calculations it made at the original sentencing hearing. (Doc. 817; Doc. 633).

Mr. Michel now moves the Court under Rule 36 of the Federal Rules of Criminal Procedure to correct alleged clerical errors or errors in the record. Rule 36, entitled "Clerical Error" provides:

After giving any notice it considers appropriate, the 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~~

ii. Motion to correct under Rule 36

Review of Mr. Michel's Motion to Correct (Doc. 820), shows he does not seek to correct a clerical error or an error in the record. Instead, he asks the Court to correct a different sort of purported "error." Mr. Michel objects to Judge Butler's reliance upon certain facts reported in the PSR because they related to the count of the indictment set aside by the Eleventh Circuit, i.e. Count 10. At the sentencing hearing, the United States sought a four-level enhancement based on Michel's role as a leader in the conspiracy charged in Count 10 of the indictment. Judge Butler denied this request because he believed the evidence of Michel's role in the conspiracy supported a lesser enhancement. Judge Butler assigned a three-level enhancement over the United States' objection. The facts relating to this Count were considered by Judge Butler as "relevant conduct" for the purposes of sentencing. The transcript of the sentencing hearing and Judge Butler's Statement of Reasons document this conclusion. (Doc. 817; Doc. 633).

Despite Mr. Michel's persistent requests, "[i]t is clear in this Circuit that Rule 36 may not be used to make a substantive alteration to a criminal sentence." *United States v. Portillo*, 363 F.3d 1161, 1164 (11th Cir. 2004) (citation and internal quotation marks omitted); *see also United States v. Cordon*, 632 Fed.Appx. 990, 992 (11th Cir. Dec. 1, 2015) ("Rule 36 may not be used to make substantive changes to a defendant's sentence; it may be used to correct only mistakes

that are minor or mechanical in nature.”); *United States v. Pryor*, 631 Fed.Appx. 844, 846-47 (11th Cir. Nov. 19, 2015) (affirming denial of Rule 36 motion where movant “sought a ‘substantive alteration’ of his criminal sentence,” but “Rule 36 is not an appropriate mechanism for raising such substantive challenges”). Mr. Michel’s Petition is not requesting that a clerical error or a

~~minor or mechanical mistake be corrected. Instead, he is seeking a substantive alteration of his~~

sentence beyond the purview of Rule 36. Mr. Michel’s Petition to Correct a Clerical Error

Pursuant to Rule 36 (Doc. 820) is **DENIED**.

III. Requests for Alternative Relief Pursuant to 28 U.S.C. § 2241

As an alternative request, Mr. Michel asks the Court to consider his request as a motion for relief under 28 U.S.C. § 2241. This Court is not an appropriate venue for consideration of Mr. Michel’s request. Section 2241 states that a writ of habeas corpus may be granted by a district court within its “respective jurisdiction.” 28 USC § 2241(a). *See also Fernandez v. United States*, 941 F.2d 1488, 1495 (11th Cir. 1991) (“Section 2241 petitions may be brought only in the district court for the district in which the inmate is incarcerated.”); *United States v. Brown*, 748 F. App’x 286, 287 (11th Cir. 2019) (unpublished) (concluding that a district court would have lacked jurisdiction over a petition for time served “because [the inmate] was required to file any § 2241 petition like this in the district where he was incarcerated, which was South Carolina”). Mr. Michel’s address reflects that he is incarcerated in Florida, not the Southern District of Alabama. Even if this Court were the proper forum for a § 2241 claim, Mr. Michel has not established that he would be entitled to such relief. Mr. Michel’s motion provides no facts demonstrating he is challenging the execution of his sentence. Mr. Michel simply has challenged the language in the PSI. His motion demonstrates no specific, concrete, impact on the application of his sentence.

Thus, even if this Court was an appropriate venue to bring a § 2241 claim, the claim as presented is due to be denied.

DONE and ORDERED this 21st day of November, 2019.

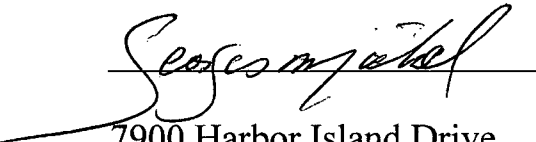
/s/ JEFFREY U. BEAVERSTOCK
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF COMPLIANCE

Petitioner hereby certifies, by his undersigned signature, that this petition for writ of certiorari complies with the word and/or page limitations (6851 words; 37 pages) allowed by the rules of this Court as calculated by the computer count.

CERTIFICATE OF SERVICE

Petitioner hereby certifies, by his undersigned signature, that the original copy of the foregoing petition was served upon the Office of the Clerk of the Supreme Court of the United States whose address is: 1 First Street, N.E., Washington, DC, 20543; and that a copy was sent to the Office of the United States Solicitor General of the United States on this 24 day of December, 2020, by First Class U.S. Mail at the following address: 950 Pennsylvania Avenue, N.W., Washington, DC, 20530.


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