

JUDICIAL COMPLAINT FILED w/ CIR. EXEC. 06-23-90127  
CASE NO. B

D.N. 168

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

REQUESTED TO CORRECT PSR, BUT JUDGE FURTHER FALSIFIED RECORD

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 3:18-cr-136-DJH

ERIC C. SUTHERLAND,

Defendant.

\* \* \* \* \*

**ORDER**

Defendant Eric C. Sutherland moves to correct a clerical error in his Presentence Investigation Report (PSR) pursuant to Federal Rule of Criminal Procedure Rule 36. (Docket No. 154) He also moves to withdraw his plea, arguing that the clerical error renders his prior guilty plea unknowing and unintelligent, thus entitling him to withdraw the plea. (*Id.*, PageID.753) The United States does not object to the requested correction but opposes Sutherland's motion to withdraw his plea, contending that Sutherland "cannot use a Rule of Criminal Procedure designed to address clerical errors to relitigate the validity of his guilty plea." (D.N. 159, PageID.793) Sutherland counters that correction of the clerical error reveals a Speedy Trial Act violation.<sup>1</sup> (D.N. 160, PageID.795–96 (citing 18 U.S.C. § 3161(d))) Specifically, he argues that the gap in

PSR IS STILL FALSE

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<sup>1</sup> Without seeking leave to do so, Sutherland submitted an additional reply after filing his initial reply to the government's response. (D.N. 162) This action is procedurally improper, and the Court will not consider the second reply because the local rules do not contemplate multiple replies by a single party. *See LCrR 47.1(d); LCrR 47.1(h)* (explaining that motions are considered submitted for the Court's decision "after the completion of the hearing or oral argument—or if none—*after the reply is filed*" (emphasis added)). Regardless, consideration of the supplemental reply would not alter the Court's decision, as the filing merely reiterates arguments Sutherland made in his motion and initial reply. (*Compare D.N. 154 and D.N. 160 with D.N. 162*)

time between his initial arrest on state charges and the issuance of the federal indictment violates the Act and that the error “prevented [him] from mounting a proper defense.”<sup>2</sup> (*Id.*)

Sutherland’s PSR currently states that he was arrested on July 27, 2018, on Kentucky state charges, which the Commonwealth dismissed on July 28, 2018. (D.N. 54, PageID.175) ~~THE  
PARTIES AGREE THAT THIS IS AN ERROR; THE DISMISSAL OCCURRED ON SEPTEMBER 27, 2018. (D.N. 154; D.N. 159)~~ The parties agree that this is an error; the dismissal occurred on September 27, 2018. (D.N. 154; D.N. 159)

159) Federal Rule of Criminal Procedure 36 gives the Court discretion 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. “[A] clerical error must not be one of judgment or even of misidentification, but merely of recitation.” *United States v. Robinson*, 368 F.3d 653, 656 (6th Cir. 2004) (citation omitted). The Court can correct an error “after giving any notice it considers appropriate.” *Id.* at 655 (citing Fed. R. Crim. P. 36).

An incorrectly stated date in a PSR is a clerical error covered by Rule 36. *See, e.g., United States v. Young Ko*, 485 F. App’x 102, 106 (6th Cir. 2012) (applying the Rule to numerical discrepancy between oral ruling and written judgment regarding the counts pleaded to and dismissed). And the parties here had ample notice of the error and potential correction: Sutherland requested the correction in his motion, and the government responded to that motion. (*See* D.N. 154; D.N. 159) The Court will therefore grant Sutherland’s motion seeking correction under Rule 36.

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<sup>2</sup> Sutherland also moves for leave to introduce new evidence to support the purported Speedy Trial Act violation (D.N. 163), and he moves for relief from judgment on the same ground. (D.N. 166) These motions reiterate arguments and evidence that Sutherland already presented to the Court. (*Compare id. and* D.N. 163 *with* D.N. 154 *and* D.N. 160) Moreover, as discussed below, his contention rests on a misinterpretation of the Speedy Trial Act. *See infra* p. 3. Both motions will be denied as moot.

Rule 36 does not, however, offer relief from judgment or sentencing because “[t]he language of the Rule confines itself to the correction of clerical errors, oversights, and omissions.” *United States v. Ferguson*, 918 F.2d 627, 630 (6th Cir. 1990) (citations omitted). A “federal sentence [cannot be] substantively altered” by a party’s invocation of Rule 36. *See id.* And in any event, Sutherland’s allegation that correction of the clerical error reveals a Speedy Trial Act violation is unfounded. (See D.N. 154; D.N. 160, PageID.796) State officials arrested Sutherland on state charges on July 27, 2018. (D.N. 54, PageID.182) He was federally indicted on September 6, 2018 (D.N. 8), and federal officials arrested him on federal charges on October 1, 2018. (D.N. 1) ~~OCTOBER COMES AFTER SEPTEMBER D.N.'S REVERSEB.~~ ~~JUDGE IS TRYIN, TO COVER-UP STA 30-DAY VIOLATION.~~ Sutherland maintains that the United States violated the Act when it failed to indict him within thirty days of his initial arrest. (D.N. 160, PageID.796) The Speedy Trial Act states that “[a]ny information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested.” 18 U.S.C. § 3161(b). But for purposes of the Act, an arrest occurs when “formal *federal* charges are pending.” *United States v. Blackmon*, 874 F.2d 378, 381 (6th Cir. 1989) (emphasis added) (citations omitted). “An arrest by state officers . . . does not constitute an ‘arrest’ under [§] 3161.” *Id.* Sutherland’s contention that the time limit began to run on the date of his arrest by state officials (D.N. 160, PageID.795) is therefore misplaced. *Blackmon*, 874 F.2d at 381. For Speedy Trial Act purposes, he was arrested on October 1, 2018, after the September 6, 2018 Indictment (see D.N. 1; D.N. 8), and the statute was not violated. § 3161(b). Accordingly, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** as follows:

- (1) Sutherland’s motion to correct the clerical error in the Presentence Investigation Report pursuant to Federal Rule of Criminal Procedure 36 (D.N. 154) is **GRANTED**. The

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paragraph labeled "Release Status" in the PSR is **CORRECTED** to read as follows: "The defendant was arrested on July 27, 2018, on related state charges. A federal grand jury returned a true bill in this case on September 6, 2018. The state grand jury returned a no true bill on **FALSE! FEDERAL CUSTODY BEGINS JULY 27, 2018** September 27, 2018. On October 1, 2018, the defendant was arrested on a federal arrest warrant **SEE COMPUTATION DATA B.O.P.** issued in conjunction with the federal Indictment. (He has remained in federal custody since October 1, 2018.)

- (2) Sutherland's motion to withdraw his guilty plea (D.N. 154) is **DENIED**.
- (3) Sutherland's motion to introduce new evidence (D.N. 163) is **DENIED** as moot.
- (4) Sutherland's motion seeking relief from judgment (D.N. 166) is **DENIED** as moot.
- (5) The matter remains **CLOSED** and **STRICKEN** from the Court's docket.

October 30, 2023



David J. Hale, Judge  
United States District Court

**Additional material  
from this filing is  
available in the  
Clerk's Office.**