

NOT RECOMMENDED FOR PUBLICATION

Nos. 24-6146/25-5164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Jul 15, 2025

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE WESTERN DISTRICT OF
ARCHIE M. WHALEN,	)	KENTUCKY
	)	
Defendant-Appellant.	)	

ORDER

Before: SILER, KETHLEDGE, and WHITE, Circuit Judges.

In No. 24-6146, pro se federal prisoner Archie M. Whalen appeals the district court's order denying his discovery motion. The government moves to dismiss this appeal for lack of appellate jurisdiction. Whalen moves for discovery in this case. In No. 25-5164, Whalen appeals the district court's order dismissing his motion to correct his presentence report. He also moves to supplement the record. These cases have been assigned to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we deny the government's motion to dismiss Whalen's appeal in No. 24-6146, vacate the district court's order in No. 24-6146, and affirm the district court order in No. 25-5164.

In 2012, a federal jury convicted Whalen of transporting a minor girl across state lines with the intent to engage in sexual activity, in violation of 18 U.S.C. § 2423(a). The district court sentenced Whalen to 360 months in prison, and we affirmed. *See United States v. Whalen*, 578 F. App'x 533 (6th Cir. 2014). In 2018, the district court denied Whalen postconviction relief from his conviction and sentence under 28 U.S.C. § 2255, and we affirmed. *See Whalen v. United States*, No. 18-5827 (6th Cir. Feb. 20, 2020). We placed Whalen on filing restrictions because he

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persists in submitting frivolous applications for permission to file second or successive § 2255 motions. *See In re Whalen*, No. 24-5497 (6th Cir. Oct. 1, 2024).

Whalen has also bombarded the district court with frivolous postconviction motions, including for discovery from the government, his trial attorney, and third parties. We recently held that, in the absence of a pending § 2255 motion or a statute or rule authorizing discovery, the district court lacked subject-matter jurisdiction to consider Whalen's discovery motion. *See United States v. Whalen*, No. 23-6126, slip op. at 3-4 (6th Cir. Dec. 4, 2024). Accordingly, we vacated the district court's order denying Whalen's discovery motion and remanded the case to the district court with instructions to dismiss the motion for lack of jurisdiction. *See id.* at 4.

In No. 24-6146, Whalen filed another motion seeking discovery from the government. Because Whalen's appeal in No. 23-6126 remained pending at that time, the district court considered and denied the motion. In No. 25-5164, Whalen filed a motion to correct alleged factual errors in his presentence report. The district court dismissed that motion.

The government moves to dismiss Whalen's appeal in No. 24-6146. The government argues that we lack appellate jurisdiction because the district court lacked jurisdiction to consider Whalen's discovery motion and because the denial of a discovery motion is not a final appealable order. But we have jurisdiction to determine whether the district court had subject-matter jurisdiction over Whalen's discovery motion. *See Siding & Insulation Co. v. Acuity Mut. Ins.*, 754 F.3d 367, 369 (6th Cir. 2014) ("If the district court lacks original jurisdiction, our appellate jurisdiction extends no further than 'correcting the error of the lower court in entertaining the suit.'" (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998))). We therefore deny the government's motion to dismiss. And as before, the district court lacked jurisdiction to consider Whalen's discovery motion because he had no matters pending that authorized him to take discovery. *See Whalen*, No. 23-6126, slip op. at 3-4. Accordingly, we vacate the district court's order in this case.

But we affirm the district court's order in No. 25-5164 because it correctly recognized that it lacked jurisdiction to correct Whalen's presentence report. *See Whalen*, No. 23-6126, slip op. at 3 ("Once a court sentences a criminal defendant, it generally has jurisdiction to continue hearing

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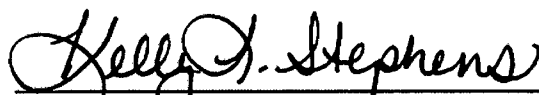
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related issues only when authorized by statute or rule.” (quoting *United States v. May*, 500 F. App’x 458, 460 (6th Cir. 2012) (citing *Carlisle v. United States*, 517 U.S. 416 (1996))). Fed. R. Crim. P. 36 allows a court to “at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.” And the Fifth Circuit has held that “the PSR is a ‘part of the record’ within the meaning of Rule 36.” *United States v. Mackay*, 757 F.3d 195, 200 (5th Cir. 2014).

In his motion to correct the presentence report, Whalen asserted that he did not send Yahoo messages that the presentence report attributed to him. He explained that he did not yet own his cell phone on the day those messages were sent. Caselaw from several circuits indicates that this factual dispute is outside the realm of the “clerical error[s]” that Rule 36 allows courts to correct. See *United States v. Werber*, 51 F.3d 342, 347 (2d Cir. 1995) (“Rule 36 covers only minor, uncontroversial errors.”); *United States v. Guevremont*, 829 F.2d 423, 426 (3d Cir. 1987) (“[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.’” (quoting *Dura-Wood Treating Co. v. Century Forest Indus.*, 694 F.2d 112, 114 (5th Cir. 1982))); *United States v. Jones*, 608 F.2d 386, 389 (9th Cir. 1979) (“Rule 36 was intended to allow correction of clerical errors, not to allow reassessment of the merits of an earlier decision after the time for reconsideration or appeal ha[s] elapsed.”). Therefore, the district court did not have jurisdiction to correct the presentence report.

In summary, in No. 24-6146, we **DENY** the government’s motion to dismiss, **VACATE** the district court’s order denying Whalen’s discovery motion, and **REMAND** the case to the district court with instructions to dismiss the motion for lack of jurisdiction. In No. 25-5164, we **AFFIRM** the district court’s order. We **DENY** all other pending motions.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk