

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK SCAIFE,

Defendant.

Case No. 04-20039-10-CM

MEMORANDUM AND ORDER

Defendant Mark Scaife filed a motion to correct judgment pursuant to Federal Rule of Criminal Procedure 36 (Doc. 590). Defendant pleaded guilty to conspiracy to possess with the intent to distribute cocaine. This court sentenced defendant to 168 months imprisonment with three years of supervised release on November 8, 2004. In his motion, defendant contends that the judgment (Doc. 251) does not reflect the court's oral statements made on the record at his sentencing. Defendant alleges that the court orally stated that his sentence was to run concurrently with his sentence already imposed in Wyandotte County District Court, Case No. 03CR336C. He argues, however, that the written judgment does not reflect the court's statement regarding the concurrent nature of his sentence.

Rule 36 allows the 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. Defendant does allege the type of error or omission that could properly be corrected under Rule 36. *See United States v. Hardesty*, 55 F. Supp. 2d 1277, 1279 (D. Kan. 1999) (collecting Tenth Circuit cases illustrating the types of mistakes for which correction under Rule 36 is appropriate).

A review of the sentencing transcript indicates that defendant is correct that the court ordered his sentence to run concurrently with his other sentence. But a review of the judgment in this case reveals no mistake or omission—the judgment clearly states that “[t]his sentence is ordered to run concurrently with the sentence imposed in Wyandotte County District Court, Case No. 03CR336C.” (Doc. 251 at 2.) Because there is no clerical error or omission to correct, defendant’s motion fails.

IT IS THEREFORE ORDERED that defendant’s Motion Pursuant to Federal Rules of Criminal Procedure 36 (Doc. 590) is denied.

Dated this 12th day of February, 2014, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge