

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL ACTION
)	
v.)	No. 12-20066-24-KHV
)	
ALFREDO MARQUEZ,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

This matter is before the Court on defendant's Motion Pursuant To Fed. R. Crim. P. Rule 36 (Doc. #2184) filed September 13, 2019. For reasons stated below, the Court overrules defendant's motion.

Defendant seeks to have the Presentence Investigation Report ("PSR") corrected so that it reflects the Court's ruling on his objections at sentencing. Defendant apparently seeks the correction because the BOP may use the PSR "with respect to his incarceration, education, camp placement, programming [and] security levels." Motion Pursuant To Fed. R. Crim. P. Rule 36 (Doc. #2184) at 6.

Defendant cites Rule 36, Fed. R. Crim. P., which authorizes the Court at any time 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." Defendant has not shown any clerical-type error in the PSR. The PSR accurately sets forth the United States Probation Office's position and the parties' objections. The Statement Of Reasons (Doc. #1456) reflects that the Court adopted the PSR except it "found that the defendant qualified for [a] 3 level enhancement, pursuant to USSG § 3B1.1(b), instead of the 4 level enhancement assessed in the PSR." By rule, the Court's

determinations at sentencing, as reflected in the statement of reasons, are appended “to any copy of the presentence report made available to the Bureau of Prisons.” Fed. R. Crim. P. 32(i)(3)(C). Because the PSR and Statement Of Reasons (Doc. #1456) together accurately reflect the Court’s findings at sentencing, defendant is not entitled to relief under Rule 36.

IT IS THEREFORE ORDERED that defendant’s Motion Pursuant To Fed. R. Crim. P. Rule 36 (Doc. #2184) filed September 13, 2019 is **OVERRULED**.

Dated this 8th day of October, 2019 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge