

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2008

No. 07-20912
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

TRAVIS BYRD

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:00-CR-339-1

Before DAVIS, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

Travis Byrd, federal prisoner # 88313-079, appeals the denial of his FED. R. CRIM. P. 36 motion, in which he challenged the sentence imposed following his jury conviction for possession with intent to distribute cocaine and aiding and abetting. Byrd argues that the sentencing court made a clerical error when it included in his drug quantity calculation the 1.9 kilograms of cocaine found in possession of his co-defendant absent evidence of a conspiracy or partnership.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Byrd's argument constitutes a substantive challenge to his sentence and is therefore not cognizable in a Rule 36 motion, which is a vehicle reserved for correcting only errors that are clerical in nature or that arise from oversight or omission. See FED. R. CRIM. P. 36; *United States v. Spencer*, 513 F.3d 490, 491-92 (5th Cir. 2008); *United States v. Steen*, 55 F.3d 1022, 1025-26 n.3 (5th Cir. 1995). He has therefore shown no error on the part of the district court in denying his request for Rule 36 relief.

AFFIRMED.