

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 22, 2013

Lyle W. Cayce
Clerk

No. 12-50624

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROBERT KEITH ADAMS,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 5:97-CR-23-1

Before JOLLY, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:*

Robert Keith Adams, federal prisoner # 78734-080 moves this court for leave to proceed in forma pauperis (IFP) in an appeal of the district court's dismissal on jurisdictional grounds of his motion to enforce plea agreement and correct clerical error in the judgment. He argues that the Government breached the plea agreement by allowing restitution in an amount greater than the amount to which Adams agreed in the plea agreement. Further, he asserts that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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the district court retains jurisdiction to enforce a plea agreement at any time; therefore, the court's dismissal for lack of jurisdiction was erroneous.

A movant for IFP on appeal must show that he is a pauper and that the appeal is taken in good faith. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). This court's inquiry into Adams's good faith "is limited to whether the appeal involves 'legal points arguable on their merits (and therefore not frivolous).'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (citation omitted).

To the extent that Adams sought modification of the restitution order, the district court lacked jurisdiction to address the issue. *See United States v. Hatten*, 167 F.3d 884, 887 n.5 (5th Cir. 1999); *see United States v. Segler*, 37 F.3d 1131, 1135 (5th Cir. 1994). Further, Federal Rule of Criminal Procedure 36 is the appropriate vehicle for changes that do not substantively alter the orally announced sentence but instead correct errors in the written judgment. *United States v. Spencer*, 513 F.3d 490, 491-92 (5th Cir. 2008). The amount of restitution announced at sentencing is consistent with the amount stated in the judgment of conviction and sentence.

Adams has not established that he will raise a nonfrivolous appellate issue. *See Carson*, 689 F.2d at 586. Accordingly, we DENY the motion to proceed IFP on appeal, and we DISMISS Adams's appeal as frivolous. *See 5TH CIR. R. 42.2.*