

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 3, 2023

Lyle W. Cayce
Clerk

No. 23-40261
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIKEDRION LISTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:21-CR-539-1

Before BARKSDALE, ENGELHARDT, and WILSON, *Circuit Judges.*

PER CURIAM:*

The district court revoked Mikedrion Lister's term of probation and sentenced him to 18-months' imprisonment. Lister contends—and the Government agrees—that the written revocation judgment contains a clerical error. Lister and the Government seek a remand for correction of the judgment under Federal Rule of Criminal Procedure 36.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Rule 36 states: “After giving any notice it considers appropriate, the court may 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”. FED. R. CRIM. P. 36. This rule applies “[w]here the record makes it clear that an issue was actually litigated and decided but was incorrectly recorded in or inadvertently omitted from the judgment”. *United States v. Cooper*, 979 F.3d 1084, 1089 (5th Cir. 2020) (citation omitted).

The district court’s written judgment contains a clerical error. At the revocation hearing, the court explicitly found, *inter alia*, that the Government failed to “establish” Lister violated the terms of his supervision by possessing or using a controlled substance. Nevertheless, the written judgment states Lister was found guilty of violating the condition prohibiting possessing or using a controlled substance (“Violation Number 1” in the written judgment). In other words, the written judgment “incorrectly recorded” how the controlled-substance violation was resolved at the revocation hearing. *Id.* (citation omitted). Accordingly, the clerical error in the written judgment is subject to correction under Rule 36.

AFFIRMED; REMANDED to correct the clerical error in the judgment.