

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v. [REDACTED]

DEFENDANT'S WITHDRAWAL OF MOTION TO AMEND JUDGMENT

[REDACTED] Assistant Federal Public Defender and counsel of record for Defendant [REDACTED], pursuant to Rule 36 of the Federal Rules of Criminal Procedure, moves the Court to amend the judgment entered in this case on [REDACTED], for clerical error. The judgment entered in this case directed that the defendant's sentence of imprisonment of 120 months run concurrently to the North Carolina state sentence under case number [REDACTED], and concurrently with the North Carolina state sentence in case number [REDACTED].

In fact, [REDACTED] had already completed service of his state sentence in case number [REDACTED] by the time he was received by the Federal Bureau of Prisons. His undischarged state sentence at that time was in fact imposed in state case number [REDACTED].

It is requested therefore that the judgment in this case be amended to direct that the sentence imposed in this case run concurrently with the defendant's state sentence in case number

[REDACTED].

In further support of this motion, counsel for [REDACTED] states as follows.

1. [REDACTED] was sentenced on [REDACTED] by this court to a term of imprisonment of 120 months, following his conviction for one count of Possession of a Firearm by a Previously Convicted Felon, in violation of Title 18 U. S. C. §§ 922(g)(1) and 924(a)(2). The judgment in this case was entered on [REDACTED].

The judgment stated:

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months.

[This sentence shall run consecutively to the sentence imposed by State Court under Case No. 97crs1453 and shall run concurrently with the sentence imposed by State Court under Case No. [REDACTED]] (Attachment One)

2. On [REDACTED], [REDACTED] was arrested by Elkin, North Carolina police officers on charges of Driving While Impaired, Possession of Drug Paraphernalia, Trafficking Cocaine, Possession with Intent to Sell and Deliver Cocaine, Possession with Intent to Manufacture, Sell and Deliver Zanex and Possession of Marijuana under Surry County Superior Court Docket numbers [REDACTED], [REDACTED], [REDACTED]. The firearm upon which the instant federal prosecution was based was also recovered during this incident. [REDACTED] was released on bond on [REDACTED].

3. [REDACTED] was again arrested on [REDACTED] on various state charges. On [REDACTED], [REDACTED] was sentenced to a one year term of imprisonment in case [REDACTED], which was combined

with 97CRS001453. Service of this sentence was completed on June 5, 2000. On [REDACTED] [REDACTED] was sentenced to a six month active term in case [REDACTED]; which he completed on [REDACTED].

4. The Federal Bureau of Prisons (BOP) has determined that, since the sentence imposed in case [REDACTED] was satisfied before [REDACTED] was sentenced in the instant case, his state sentence could not be construed as running concurrently with his federal sentence. The BOP has therefore calculated [REDACTED] sentence in this case as a term of imprisonment of 120 months, commencing on [REDACTED], the day that he was released to the custody of the U. S. Marshal's Service. (Attachment Two - Letter from [REDACTED] [REDACTED])

5. When [REDACTED] was sentenced by this court [REDACTED] the undischarged state sentence that he was serving was an active term of 20 to 24 months in Surry County Case number [REDACTED] Paragraph 28 in the presentence report reflected that the sentence that [REDACTED] received in case number [REDACTED] was 35 to 42 months imprisonment, to be served at the conclusion of all sentences that he was then serving. Information from the North Carolina Department of Correction Public Access Information System confirms that [REDACTED] was in fact discharged from the custody of the State of North Carolina (and into the custody of the Federal Bureau of Prisons), in case [REDACTED] on [REDACTED] [REDACTED] [REDACTED]. (Attachment Three - North Carolina Department of Correction Public

Access Information System Record of Inmate No. [REDACTED]; [REDACTED]
[REDACTED]

6. Counsel asserts that this court's judgment mistakenly referred to case number [REDACTED], as the state sentence that was to run concurrently with [REDACTED] federal sentence. The judgment should have stated that the term of imprisonment of 120 months imposed in this case should run concurrently with [REDACTED] state sentence in case number [REDACTED]. The error constitutes clerical error within the meaning of Rule 36 of the Federal Rules of Criminal Procedure, and as such may be corrected by this court

WHEREFORE counsel for [REDACTED] respectfully requests that the court enter an order amending the judgment in this case by directing that the sentence imposed in this case run concurrently with the sentence imposed in state case number [REDACTED].

Respectfully submitted, this the _____ day of [REDACTED]

[REDACTED]
Federal Public Defender

[REDACTED]
Assistant Federal Public Defender
North Carolina State Bar No. [REDACTED]
101 South Elm Street, Suite 210
Greensboro, North Carolina 27401
Telephone No. (336) 333-5455

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been served upon counsel for the government by first class mail at the following address.

██████████
Assistant U. S. Attorney
Post Office Box 1858
Winston-Salem, NC 27402

This the _____ day of ██████████

Assistant Federal Public Defender

ATTACHMENT ONE

ATTACHMENT TWO

ATTACHMENT THREE