

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6966

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PRESTON CORNELIUS EVERETT, a/k/a P,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Leonie M. Brinkema,
District Judge. (1:05-cr-00019-LMB-1)

Submitted: September 24, 2013

Decided: September 27, 2013

Before NIEMEYER and THACKER, Circuit Judges, and HAMILTON,
Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Preston Cornelius Everett, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Preston Cornelius Everett appeals the district court's order denying his motion to correct a clerical error in his 2005 criminal judgment. For the reasons that follow, we vacate and remand.

Everett specifically sought relief under Fed. R. Crim. P. 36 to correct an alleged clerical error in his criminal judgment for conspiracy to possess with intent to distribute five kilograms or more of cocaine. The district court treated the motion under Fed. R. Crim. P. 35(a) and dismissed the action as untimely because Rule 35(a) motions must be filed within fourteen days of sentencing. Rule 36 relief, however, may be granted at any time, as delineated in the Rule itself. Thus, we vacate and remand for the district court to address Everett's motion under Rule 36. We express no opinion as to the merits of any Rule 36 motion.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED