

JAN 26 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RUSSELL EUGENE SCHLEINING,

Defendant - Appellant.

No. 09-30175

D.C. No. 2:04-cr-00016-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Russell Eugene Schleining appeals pro se from the district court's order denying his motion to correct the judgment pursuant to Fed. R. Crim. P. 36. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Schleining contends that the district court erred when it denied his motion to correct the judgment because the judgment contains an incorrect reference to 18 U.S.C. § 924(e), which was the result of a clerical error. The record indicates that any error was not clerical in nature thus, the district court's decision to deny the motion was not clearly erroneous. *See United States v. Kaye*, 739 F.2d 488, 491 (9th Cir. 1984).

Schleining's motion for appointment of counsel is denied as moot.

AFFIRMED.