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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>VICTOR PACHECO,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 11-10613

D.C. No. 5:01-cr-20050-EXE

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

Victor Pacheco appeals pro se from the district court’s order denying his motion to amend the judgment pursuant to Federal Rule of Criminal Procedure 36.

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Pacheco contends that the judgment should be corrected to reflect the district

* 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).

court's intent for his sentence to run concurrently with an undischarged state sentence. Specifically, he argues that, under U.S.S.G. § 5G1.3(b)(1), he is entitled to credit for time served in state custody before he was convicted and sentenced in federal court.

The district court properly denied Pacheco's Rule 36 motion. *See United States v. Penna*, 319 F.3d 509, 513 (9th Cir. 2003) ("Rule 36 is a vehicle for correcting *clerical* mistakes but it may not be used to correct judicial errors in sentencing.") (emphasis in original); *United States v. Kaye*, 739 F.2d 488, 490 (9th Cir. 1984) ("[T]he provisions of Rule 36 do not permit a substantive change in the period of incarceration which the defendant must serve.").

Pacheco's request for appointment of counsel is denied.

AFFIRMED.