

JUN 20 2016

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NOT FOR PUBLICATION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.

FALASHA ALI,

Defendant - Appellant.

No. 15-10033

D.C. No. 2:06-cr-00160-RLH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge, Presiding

Submitted June 14, 2016**

Before: BEA, WATFORD, and FRIEDLAND, Circuit Judges.

Falasha Ali appeals pro se from the district court's order denying his "Motion for Correction of Clerical Error and Omission Pursuant to Federal Rule of Criminal Procedure 36." We have jurisdiction under 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).

The district court correctly concluded that Federal Rule of Criminal Procedure 36 does not permit Ali to challenge the criminal history calculation in his presentence report or the court's competency finding. *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."). The district court also correctly concluded that it lacked authority to modify the presentence report under Federal Rule of Criminal Procedure 32. *See United States v. Catabran*, 884 F.2d 1288, 1289 (9th Cir. 1989) ("[O]nce the district court has imposed sentence, the court lacks jurisdiction under Rule 32 to hear challenges to a presentence report.").

The district court properly treated Ali's remaining claims as a second or successive motion under 28 U.S.C. § 2255, for which he did not obtain preauthorization from this court, as required by Section 2255(h).

AFFIRMED.