

JAN 25 2017

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NOT FOR PUBLICATION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.

JOHN F. BIG LEGGINS, Jr.,

Defendant-Appellant.

No. 16-30079

D.C. No. 4:07-cr-00072-BMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Submitted January 18, 2017**

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

John Big Leggins, Jr., appeals pro se from the district court's order denying his motion to correct a clerical error in the judgment under 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 Ninth Circuit Rule 36-3.

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

Big Leggins sought to correct the written judgment, which he contends erroneously states that restitution payments are to be made during his term of incarceration. He argues that this conflicts with the oral pronouncement of sentence, which he claims delayed restitution payments until the commencement of his supervised release term. We agree with the district court that there is no conflict between the written judgment and oral pronouncement of sentence, which was silent as to when restitution payments will commence. Thus, the district court did not clearly err in finding that there was no clerical error in the judgment that warranted correction under Rule 36. See *United States v. Dickie*, 752 F.2d 1398, 1400 (9th Cir. 1985).

AFFIRMED.