

United States Court of Appeals
For the Eighth Circuit

No. 16-3120

United States of America

Plaintiff - Appellee

v.

Van Phong Nguyen

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Davenport

Submitted: November 30, 2016

Filed: December 12, 2016

[Unpublished]

Before LOKEN, MURPHY, and BENTON, Circuit Judges.

PER CURIAM.

Federal prisoner Van Phong Nguyen appeals the district court's¹ denial of his Federal Rule of Criminal Procedure 36 motion. We affirm.

¹The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

In 2008, Nguyen was sentenced to 210 months in prison, after a jury in the Southern District of Iowa convicted him of conspiracy to distribute methylenedioxymethamphetamine, a.k.a. ecstasy, in violation of 21 U.S.C. §§ 846, 841(b)(1)(C), 851. In his Rule 36 motion, Nguyen sought to have his sentence modified to reflect the district court's intent to give him sentencing credit for time served on an undischarged 108-month prison sentence for an earlier conspiracy to distribute the same drug in the District of Minnesota.

While Nguyen may be correct that the district court could have fashioned a sentence that took into account his Minnesota sentence by downwardly adjusting his prison term and expressly referencing U.S.S.G. § 5G1.3(b), see Coloma v. Holder, 445 F.3d 1282, 1284-85 (11th Cir. 2006) (per curiam), the district court did not do so. The district court is now without authority under Rule 36 to modify the sentence it imposed. See United States v. Yakle, 463 F.3d 810, 811 (8th Cir. 2006) (per curiam) (Rule 36 relief is available only for "mere scrivener's mistake"); United States v. Tramp, 30 F.3d 1035, 1037 (8th Cir. 1994) (Rule 36 does not authorize sentence modification at any time); see also 18 U.S.C. § 3582(c).

Accordingly, we affirm the denial of Rule 36 relief.
