

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	Case No. 1:03CR00093
	)	
v.	)	<b>OPINION AND ORDER</b>
	)	
<b>ROBERT LEE SMITH,</b>	)	By: James P. Jones
	)	Chief United States District Judge
Defendant.	)	

*Robert Lee Smith, Pro Se.*

The defendant was sentenced in this court on June 30, 2004, to 24 months imprisonment. He has filed a “Motion to Correct Clerical Error Pursuant to Fed. R. Crim. P. 36,” in which he seeks an order reducing his sentence to reflect time served in custody prior to sentencing. He previously filed a “Motion for a Nunc Pro Tunc Amended Judgment” involving the same issue, which motion was denied on October 18, 2006.

In his present motion, Smith claims that “Chief Judge Jones specifically expressed at my sentencing hearing that I was to be credited for time served in the custody of the U.S. Marshall’s [sic] Service from October 17, 2003 to July 8, 2004, a total of 265 days.” In fact, the court reporter’s notes show that the following occurred at the sentencing:

MR. DICKERT: Your Honor, just so you know, he has been in

federal custody since October. Will he get credit for that on his 24 month sentence?

THE COURT: The Bureau of Prisons administratively applies credit. That's up to the Bureau of Prisons by statute, and he will receive all such credit to which he is entitled under the statute. Thank you. You may be seated.

Thus, as stated by the court at the time, whether Smith receives credit for this jail time is up to the Bureau of Prisons and does not involve a clerical mistake by the court. As Smith suggests in his motion, the likely reason he has not received credit administratively is because his jail time was applied to another sentence. *See* 18 U.S.C.A. § 3585(b) (West 2000). In any event, the court has no jurisdiction to reduce Smith's sentence under Rule 36.

For these reasons, it is **ORDERED** that the Motion to Correct Clerical Error is DENIED.

ENTER: May 9, 2007

/s/ JAMES P. JONES  
Chief United States District Judge