

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

UNITED STATES OF AMERICA)

)

) Case No. 1:05CR00053

v.)

)

) **OPINION AND ORDER**

MARJIL LEE BERGARA,)

)

) By: James P. Jones

Defendant.)

) United States District Judge

)

Marjil Lee Bergara, Pro Se Defendant.

The defendant, a federal inmate proceeding pro se, has filed a motion seeking amendment of the judgment ordering him to pay restitution. The motion will be denied.

Marjil Lee Bergara was charged in an eleven-count Superseding Indictment relating to a fraudulent scheme in which he scammed a large amount of money from a vulnerable victim. Pursuant to a written Plea Agreement, Bergara pleaded guilty on December 14, 2005, to Count Seven of the Superseding Indictment, which alleged that he had engaged in monetary transactions involving property with a value in excess of \$10,000 derived from unlawful activity, and while on pretrial release, in violation of 18 U.S.C.A. § 1957 (West 2000 & Supp. 2011) and 18 U.S.C.A. § 3147 (West 2000). The other counts against Bergara were dismissed.

The Plea Agreement also provided that Bergara would pay restitution “for all matters included as relevant conduct.” (Plea Agreement ¶ 10.) At his sentencing, Bergara was ordered to pay restitution to the victim in the amount of \$285,909.

In his present motion, Bergara argues that since he was only convicted of Count Seven, which count recited that he had engaged in a certain monetary transaction in the amount of \$55,000, he should have been ordered to pay only that amount.

The court has no power at this time to amend the criminal judgment entered in this case. In any event, Bergara’s argument is without merit, since he agreed in his Plea Agreement to pay restitution for relevant conduct, that is, for all of the amounts that he stole from his victim. *See* 18 U.S.C.A. 3663(a)(3) (West 2000) (“The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.”). Relevant conduct includes “all acts . . . that were part of the same course of conduct or common scheme or plan as the offense of conviction.” U.S. Sentencing Commission Guidelines Manual § 1B1.3(a)(2) (2011).

For these reasons, it is **ORDERED** that the motion (ECF No. 119) is DENIED.

ENTER: February 21, 2012

/s/ JAMES P. JONES _____

United States District Judge