

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

Case Nos. 16-CR-64 & 17-CR-160

RONALD H. VAN DEN HEUVEL,

Defendant.

**GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION FOR CLARITY/CORRECTION OF IMPOSED SENTENCE**

The United States of America, by Richard G. Frohling, Acting United States Attorney, and Timothy W. Funnell, Assistant United States Attorney, provides the following response to defendant Ronald Van Den Heuvel's motion for clarity/correction of imposed sentence. For the following reasons, the Court should dismiss the motion in both cases for lack of jurisdiction.

Factual Background

Van Den Heuvel's motion concerns two cases in which he was convicted and sentenced before this Court:

- **Case No. 16-CR-64**. On October 10, 2017, Van Den Heuvel pled guilty to one count of conspiracy to commit fraud, in violation of 18 U.S.C. §§ 371, 1344, & 1014. Dkt. 151, 152. On January 5, 2018, the Court sentenced Van Den Heuvel to 36 months' imprisonment and three years' supervised release, and ordered him to pay over \$316,000 in restitution. Dkt. 181, 184, 228.
- **Case No. 17-CR-160**. On October 12, 2018, Van Den Heuvel pled guilty to one count of wire fraud, in violation of 18 U.S.C. §§ 1343, 1349, & 2. Dkt. 103, 104, 150. On January 23, 2019, the Court sentenced Van Den Heuvel to 90 months' imprisonment "concurrent to the sentence

defendant is currently serving in case number 16-CR-64,” followed by three years’ supervised release, and ordered him to pay over \$9.4 million in restitution. Dkt. 126, 144, 150.

Van Den Heuvel’s motion is styled as one seeking “clarity/correction of imposed sentence,” but he actually requests “corrections to be made within the [Bureau of Prisons’] sentry system.” Dkt. 186. In other words, he moves the Court not to clarify or correct its judgments, but to modify BOP’s administrative data, which he alleges to contain incorrect information about his (i) date of birth, (ii) sentencing date in 16-CR-64, and (iii) term of imprisonment. *Id.* He says that his date of birth should be March 16, 1954 rather than March 15, 1954; his sentencing in 16-CR-64 should be January 15, 2018 rather than January 5, 2018; and his term of sentence should be 90 months rather than 8 years and 17 days. *Id.*

After the Court directed the government to respond to Van Den Heuvel’s motion, the government emailed the motion to BOP’s Designation and Sentence Computation Center (“DSSC”). The government requested DSSC’s assistance in discerning the accuracy of Van Den Heuvel’s allegations and whether he had pursued administrative remedies to correct the alleged errors. The request was forwarded to the Sierra Team, which is responsible for inputting the information at issue. On September 21, 2021, a member of the team responded as follows:

Good afternoon, just to recap: in reviewing the inmate’s computation, it appears to be accurate. The initial sentence on Case No. 16-CR-64 was imposed on 01-05-2018 with a 36 month term with the inmate allowed to surrender once notified. On 07-06-2018, it appears that the inmate’s bond was revoked and he was [remanded] into custody which would be the “date computation began”. On 01-23-2019, the inmate is sentenced on Case No. 17-CR-160 to a 90 month term ordered concurrent with Case No. 16CR64, thus causing a concurrent overlap for a total term in effect of 8

years and 17 days, which is reflected on the computation along with the awarded jail credit. The issues pertaining to the inmate's date of birth should be handled at the parent institution. Lastly, the inmate has initiated informal requests to staff which appeared to have been answered informally. Let us know if you need additional assistance is needed.

In sum, BOP stands by its calculation of Van Den Heuvel's sentence – based on the correct sentencing date of January 5, 2018, as confirmed by the sentencing minutes, judgment, and transcript – and says that he should (or already did) address the birthdate issue at the prison.

Analysis

Van Den Heuvel cites no authority for his requested relief, and the government knows of none. District courts generally lack the authority to amend criminal judgments years after sentence was imposed. *United States v. Johnson*, 571 F.3d 716, 717 (7th Cir. 2009); *United States v. Romandine*, 206 F.3d 731, 735 (7th Cir. 2000) (discussing the limited exceptions to revisit sentencing under Federal Rule of Criminal Procedure 35, none of which apply here); see also *United States v. Wiggins*, 798 F.App'x 949, 950 (7th Cir. 2020) (observing that Rule 35's 14-day time limit to correct a clear error in a sentence is jurisdictional).

Moreover, Van Den Heuvel is not moving the Court to amend its judgments; instead, he is asking the Court to alter BOP's administrative data. To the extent that Van Den Heuvel disagrees with BOP's sentence-credit determination or is otherwise aggrieved by the agency, he must first exhaust his administrative remedies and, if still dissatisfied, file a motion under 28 U.S.C. § 2241 in the district of confinement. *United States v. Walker*, 917 F.3d 989, 993-94 (7th Cir. 2019); *United States v. Koller*, 956 F.2d 1408, 1417 (7th Cir. 1992); see also *United States v. Jacklin*, 2021 WL 4079381, at *1 (S.D. Ill. Sept.

8, 2021); *United States v. Guzman*, 2008 WL 2810217, at *1 (E.D. Wis. July 21, 2008) (dismissing prisoners' premature motions for lack of jurisdiction).

For the foregoing reasons, the Court should dismiss Van Den Heuvel's motion in both cases for lack of jurisdiction.

Respectfully submitted this 22nd day of September, 2021.

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Acting United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2021, I electronically filed the foregoing with the Clerk of the Court for the Eastern District of Wisconsin, and have caused to be mailed a copy by First Class Mail, postage pre-paid, to the following non- CM/ECF participant:

Mr. Ronald H. Van Den Heuvel
Inmate Reg. No. 15653-089
Federal Prison Camp Duluth
P.O. Box 1000
Duluth, MN 55814

s/Timothy W. Funnell
Timothy W. Funnell
Assistant United States Attorney