

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO. 8:15-cr-213-T-26TBM

JULIET SUZANNE ELLIS

ORDER

UPON DUE AND CAREFUL CONSIDERATION of the procedural history of this case, together with the parties’ written submissions, the Court concludes that the Government’s Motion to Correct Clerical Error in the Defendant’s Judgment in a Criminal Case (Dkt. 70) filed pursuant to Federal Rule of Criminal Procedure 36 is due to be denied for the following reasons.

First, as the Government concedes in its memorandum filed at docket 75, this Court is precluded from making a substantive change to the restitution order previously entered by the Court. See United States v. Pease, 331 F.3d 809, 816 (11th Cir. 2003) (holding that “Rule 36 . . . cannot be used . . . to make a substantive alteration to a criminal sentence.”) see also United States v. Portillo, 363 F.3d 1161, 1164 (11th Cir. 2004) (citing and quoting Pease). Instead, the rule can only be utilized to “correct a clerical error in the judgment[.]” Portillo, 363 F.3d at 1164. In this case, unlike in Portillo, if the Court were to grant the Government’s motion, it would in effect be making

a “substantive alteration” to the restitution part of the judgment in a criminal case by increasing the amount of restitution due the victim.

Second, by granting the motion, the Court would not only substantively increase the amount of restitution due the victim but it would also obligate Defendant to make additional restitution for forensic investigative and accounting expenses incurred by the victim which are no longer compensable under the Mandatory Victims Restitution Act. See Lagos v. United States, 138 S.Ct. 1684 (May 29, 2018).

Finally, the Court agrees with Defendant’s contention that, in light of the record before the Court, “[r]ule 36 is not available to the government in this cause because there is no unambiguous oral pronouncement which conflicts with the written order of restitution which would allow its application.”¹

ACCORDINGLY, it is **ORDERED AND ADJUDGED** that the Government’s Motion to Correct Clerical Error in the Defendant’s Judgment in a Criminal Case (Dkt. 70) is denied. The hearing scheduled for Friday, August 31, 2018, is cancelled.

DONE AND ORDERED at Tampa, Florida, on August 29, 2018.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record

¹ See docket 76, page 5.