
No. 95-1663

United States of America, *
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 *
 * Appeal from the United States
 * District Court for the
 * Western District of Arkansas.
v. *
Donald Ray Ladd, *
 * [UNPUBLISHED]
 *
 *

Submitted: February 20, 1996

Filed: February 29, 1996

Before McMILLIAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Donald Ray Ladd appeals the district court's¹ denial of his 28 U.S.C. § 2255 motion. We affirm.

Ladd pleaded guilty in 1992 to one count of armed bank robbery, in violation of 18 U.S.C. § 2113 (a) & (d). At the end of the sentencing hearing, the district court² informed Ladd of his right to appeal, but no appeal was filed. In his section 2255 motion Ladd asserted, inter alia, that his appointed counsel was

¹The Honorable Jimm Larry Hendren, United States District Judge for the Western District of Arkansas, adopting the report and recommendation of the Honorable Beverly R. Stites, United States Magistrate Judge for the Western District of Arkansas.

²The Honorable Morris S. Arnold, then United States District Judge for the Western District of Arkansas, now United States Circuit Judge.

ineffective for failing to appeal Ladd's sentence after Ladd directed him in writing to do so.

The magistrate judge appointed counsel and held two evidentiary hearings. Over Ladd's objections and after conducting a de novo review, the district court denied relief, concluding that in the absence of timely direction from Ladd to appeal, counsel was not ineffective for not appealing Ladd's sentence.

We have reviewed the record and evidentiary hearing tapes, and conclude the district court's factual findings are not clearly erroneous. See Jones v. Caspari, 975 F.2d 460, 462 (8th Cir.) (standard of review), cert. denied, 506 U.S. 924 (1992). Thus, as the district court found, Ladd knew of his right to appeal and, because he was pleased with his sentence, did not indicate to counsel any interest in an appeal until more than two months after sentencing. In this situation, counsel was not ineffective for not filing a notice of appeal. See Rodriguez v. United States, 964 F.2d 840, 841-42 (8th Cir. 1992) (counsel not ineffective where evidence showed defendant did not request counsel to file timely appeal) (per curiam). Where a defendant has not expressed a desire to appeal, no Eighth Circuit authority specifically requires counsel or the sentencing court to inform the defendant of the ten-day limit for filing a notice of appeal. The sentencing court complied fully with Federal Rule of Criminal Procedure 32(c)(5) in this case.

Accordingly, the judgment is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.