
No. 96-1833

United States of America,

Appellee,

v.

Wendell Lee Johnson,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: October 7, 1996

Filed: October 10, 1996

Before BOWMAN, MAGILL, and LOKEN, Circuit Judges.

PER CURIAM.

Wendell Lee Johnson appeals the district court's¹ denial of his motion to vacate his conviction as violative of the Double Jeopardy Clause pursuant to 28 U.S.C. § 2255. Johnson asserted that his property was forfeited prior to his conviction and sentence, and that his failure to raise this double jeopardy claim in his direct criminal appeal was due to the ineffective assistance of his counsel. We conclude that Johnson's double jeopardy claim is foreclosed for the reasons set forth in United States v. Ursery, 116 S. Ct. 2135, 2148-49 (1996) (holding civil forfeitures under 21 U.S.C. § 881(a)(6) and (7) are neither "punishment" nor criminal for purposes of double jeopardy), and United States v. One 1970

¹The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.

36.9' Columbia Sailing Boat, 91 F.3d 1053, 1056-57 (8th Cir. 1996) (holding Ursery applies to forfeitures under section 881(a)(4)). We also agree with the district court that Johnson's ineffective assistance claim fails, as he was not prejudiced by his counsel's failure to raise a meritless double jeopardy claim. See Dyer v. United States, 23 F.3d 1424, 1426 (8th Cir. 1994).

Accordingly, we affirm.

A true copy.

Attest:

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