

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 96-2470

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Leonard A. Tucker,  Appellant,  v.  United States of America,  Appellee.	* * * * * * * * * *	Appeal from the United States District Court for the Eastern District of Missouri.  <b>[UNPUBLISHED]</b>
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Submitted: March 28, 1997

Filed: April 25, 1997

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Before McMILLIAN, FAGG, and LOKEN, Circuit Judges.

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PER CURIAM.

Leonard Tucker pleaded guilty to to using or carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). He did not appeal, but filed the instant 28 U.S.C. § 2255 motion contending that this conviction is invalid under Bailey v. United States, 116 S. Ct. 501 (1995). The district court<sup>1</sup> denied relief, and Tucker appeals.

Assuming this claim is even cognizable under § 2255, it is procedurally defaulted. Tucker cannot show cause or prejudice for this default because, in pleading guilty, he stipulated that he was carrying a concealed firearm on his person while committing a drug

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<sup>1</sup>The HONORABLE STEPHEN N. LIMBAUGH, United States District Judge for the Eastern District of Missouri.

trafficking crime. Accordingly, we affirm. See United States v. Willis, 89 F.3d 1371, 1378-79 (8th Cir.), cert. denied, 117 S. Ct. 273 (1996); United States v. White, 81 F.3d 80, 83 (8th Cir. 1996). Tucker's motion for appointment of counsel is denied.

A true copy.

Attest:

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