

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-2166

Latham Riley Bell,

Petitioner - Appellee,

v.

United States of America,

Respondent - Appellant.

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Appeal from the United States
District Court for the
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: April 18, 1997

Filed: July 25, 1997

Before LOKEN, MAGILL, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

In December 1990, Latham Riley Bell pleaded guilty to one count of possession with intent to distribute cocaine in violation of 18 U.S.C. § 841(a)(1), and one count of using a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1). In December 1995, he filed this successive 28 U.S.C. § 2255 motion seeking to vacate the § 924(c)(1) conviction in the wake of Bailey v. United States, 116 S. Ct. 501 (1995). The district court granted the motion over the government's objection. The court's remedy was not merely to vacate Bell's guilty

plea; it set aside the § 924(c)(1) conviction and ordered Bell released from prison. The government appeals.

The district court's decision was made without the benefit of our subsequent decisions concerning Bailey-inspired collateral attacks on convictions that were based upon guilty pleas. Accordingly, the district court's orders of March 12, 1996, and March 18, 1996, are vacated and the case is remanded for further consideration in light of Bousley v. Brooks, 97 F.3d 284 (8th Cir. 1996), and Walker v. United States, No. 96-2086, 1997 WL 298449 (8th Cir. June 6, 1997).

A true copy.

Attest:

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