

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 8, 2009

No. 07-10652

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JAMES DARRELL WALKER

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:07-CV-006

Before WIENER, STEWART and CLEMENT, Circuit Judges.

PER CURIAM:*

Petitioner James Darrell Walker (“Walker”) sought a Certificate of Appealability (“COA”) to appeal the district court’s denial of his habeas corpus petition pursuant to 28 U.S.C. § 2255. Walker contended that he received ineffective assistance of counsel (“IAC”) because his attorney failed to file a direct appeal on his behalf after he, Walker, asked the lawyer to do so. After granting Walker a COA on the IAC claim, narrowly construed as the single question whether Walker’s lawyer failed to file the appeal, we remanded the case

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

to the district court for the limited purpose of conducting an evidentiary hearing into whether Walker had in fact requested that his attorney file a direct appeal, and we retained jurisdiction.

The district court concluded on remand that (1) on the advice of his counsel, Walker decided not to file a direct appeal,¹ and (2) Walker signed a document attesting to that fact. As this finding squarely forecloses Walker's IAC claim, his petition for habeas corpus is DENIED.

¹ Walker pleaded guilty to drug charges, which plea agreement included a waiver of appeal. Apparently, Walker's attorney told him that attempting to appeal following such a waiver would be very difficult and advised against it. Walker then agreed.