

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3434
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OBADIAH STEPHENSON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-91-113-I-4
- - - - -
(January 7, 1994)

Before DUHÉ, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:*

Obadiah Stephenson appeals from the district court's order denying his motion seeking an evidentiary hearing on his motion for a new trial. As we lack jurisdiction over this order, the appeal is DISMISSED.

Title 28, § 1291 limits this Court's jurisdiction to appeals from final decisions of district courts. 28 U.S.C. § 1291; United States v. Comeaux, 954 F.2d 255, 258-59 (5th Cir. 1992). A judgment is final for the purposes of appellate jurisdiction

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

when it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" Nagle v. Lee, 807 F.2d 435, 438 (5th Cir. 1987) (quoting Catlin v. United States, 324 U.S. 229, 233, 65 S.Ct. 631, 89 L.Ed. 911 (1945)).

As the district court has not yet fully complied with this Court's mandate by ruling on Stephenson's motion for a new trial, there has been no final judgment from which Stephenson may appeal.

Neither does the instant appeal fall within that narrow range of decisions which may be treated as final for § 1291 purposes, as a failure to adjudicate Stephenson's instant appeal from the order denying a hearing will not cost Stephenson the opportunity to appeal this decision once a final judgment has been rendered. See, e.g., United States v. Sanchez-Sotelo, ____ F.3d ____ (5th Cir. Nov. 16, 1993, No. 92-8611) 1993 WL 468550, *8; see also Comeaux, 954 F.2d at 259.

DISMISSED.