

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7053

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PHILLIP MORRIS JONES,  
a/k/a KENNETH E. BARNARD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR-C-84-62-1)

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(August 25, 1994)

Before KING, JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

Phillip Morris Jones appeals the district court's order of January 12, 1993, vacating the court's judgment of conviction and sentence and dismissing the indictment against Jones. We dismiss the appeal.

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\*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

On April 6, 1984, Phillip Morris Jones was charged by indictment in the Southern District of Texas with committing a bank robbery on February 8, 1984, in Corpus Christi, Texas ("the Corpus Christi robbery"), in violation of 18 U.S.C. § 2113. On July 24, 1985, Jones entered into a plea agreement with the United States Attorney for the Middle District of Florida in which Jones agreed to plead guilty to one bank robbery committed in the Middle District of Florida and five committed in other federal districtsSObut not the Corpus Christi robberySOin violation of 18 U.S.C. § 2113. The government, in turn, promised Jones that he would not be prosecuted for any other federal bank robberies "of which the United States is presently aware." One of the robberies of which the government was allegedly aware was the Corpus Christi robbery, which appears to have been listed in an attachment to the plea agreement. Jones was then sentenced by the United States District Court for the Middle District of Florida to fifty years of imprisonment.

In early 1986, Jones was transported to and prosecuted in the Southern District of Texas for the Corpus Christi robbery. Jones offered no objection to his prosecution in Corpus Christi; indeed, pursuant to a plea agreement, Jones pleaded guilty to the Corpus Christi robbery. The district court then sentenced Jones to five years of imprisonment, to be served consecutively to any other pending federal sentence.

On November 6, 1989, more than three years later, Jones filed a motion in the United States District Court for the Middle District of Florida to vacate his convictions and sentences imposed by that court, pursuant to 28 U.S.C. § 2255. He alleged that the government had violated the plea agreement entered into in the Middle District of Florida by prosecuting him in the Southern District of Texas for the Corpus Christi robbery. The Florida district court denied Jones' motion. On appeal, however, the Eleventh Circuit vacated Jones' plea agreement and remanded the case to the district court to allow Jones to withdraw his guilty plea. Jones v. United States, 957 F.2d 824 (11th Cir. 1992) (withdrawn on rehearing).

After the United States Attorney for the Middle District of Florida filed a petition for panel rehearing, the Eleventh Circuit determined on May 5, 1992, that its prior opinion was not final and that "it was in the best interest of all parties that the petition for rehearing be held pending further activity by the United States Attorney for the Middle District of Florida and the United States Attorney for the Southern District of Texas."

On May 29, 1992, the United States Attorney for the Southern District of Texas filed a motion in the United States District Court for the Southern District of Texas to vacate that court's judgment against Jones, requesting that the motion be granted so that the Eleventh Circuit could "grant the defendant's § 2255 motion by imposing specific performance [of the plea agreement in the Middle District of Florida], rather than by vacating the

Florida fifty-year sentence." The Texas district court then granted the government's motion on January 11, 1993, vacating its judgment and dismissing the indictment against Jones. In so doing, the court stated:

It appears that the United States Attorney's office for the Southern District of Texas may have violated [its plea agreement in Florida] by pursuing the conviction in this case. There is no intent on this Court's part to suggest any violation was deliberate or intentional, only that it may have occurred.

Jones filed a timely notice of appeal with this court. On May 25, 1994, noting that the United States District Court for the Southern District of Texas had vacated its judgment against Jones, the Eleventh Circuit granted the government's petition for rehearing that had been pending and withdrew its prior opinion, see 957 F.2d 824. The court ordered that the case be remanded to the district court in the Middle District of Florida and directed the district court "to provide to the appellant the remedy of specific performance of the Middle District of Florida plea agreement, thereby leaving intact the Florida plea agreement, the Florida convictions, and the Florida sentences."

## II.

A party generally cannot appeal a favorable judgment. Continental Airlines Corp. v. Air Line Pilots Ass'n, Int'l (In re Continental Airlines, Corp.), 907 F.2d 1500, 1519 (5th Cir. 1990); First Colonial Corp. v. American Benefit Life Ins. (in re First Colonial Corp.), 693 F.2d 447, 499 n.5 (5th Cir. 1982), cert. denied, 461 U.S. 915 (1983); see 15A CHARLES A. WRIGHT ET AL.,

FEDERAL PRACTICE AND PROCEDURE § 3902 at 61 (2d ed. 1992) (indicating that a party has standing to appeal if he is obviously aggrieved by the judgment); 9 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE, ¶ 203.06 at 3-26 (1994) ("[A] party must . . . be aggrieved by the judgment in order to have standing to appeal.").

In the instant case, Jones was not aggrieved by the district court's order in which the court vacated its judgment of conviction and sentence against Jones and dismissed the indictment against him. See Parr v. United States, 351 U.S. 513, 516-517 (1956) (explaining that "only one injured by the judgment sought to be reviewed can appeal," and concluding that the defendant did not have standing to appeal the district court's order dismissing an indictment against him, which was prompted by the government's motion, because he had not been injured by the termination of the indictment in his favor). Jones therefore has no standing to appeal in this case. To the extent that Jones has a claim that the government breached the plea agreement made with him in the Middle District of Florida by prosecuting him for the Corpus Christi robbery in the Southern District of Texas, his recourse, if any, is in the Middle District of Florida and the Eleventh Circuit.

### III.

For the foregoing reasons, we DISMISS the appeal.