

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30457
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH RANDALL,

Defendant-Appellant.

- - - - -
CONSOLIDATED WITH
No. 96-30763
- - - - -

In re:

Kenneth Randall,

Petitioner.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 95-CA-4184
- - - - -

February 3, 1997

Before JONES, DeMOSS and PARKER, Circuit Judges.

PER CURIAM:*

Kenneth Randall appeals the district court's dismissal of his fifth motion for relief pursuant to 28 U.S.C. § 2255. His

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

§ 2255 appeal was consolidated with his petition for writ of mandamus, which was treated as a notice of appeal.

Randall asserts in his appeal from the denial of his § 2255 motion that (1) the evidence seized at the time of his arrest should have been suppressed because government agents failed to "knock and announce"; (2) 18 U.S.C. § 924(c)(1) is a violation of Congress' commerce clause power and that his firearm had no nexus with interstate commerce; (3) his conviction was a violation of double jeopardy; (4) counsel's performance was ineffective; and (5) a 1995 amendment to the Sentencing Guidelines entitles him to § 2255 relief. Randall asserts in his petition for a writ of mandamus that his § 924(c)(1) conviction was invalid under Bailey v. United States, 116 S. Ct. 501, 506 (1995), that the Government failed to show that he carried the firearm during and in relation to a drug crime, and that the jury was improperly instructed.

The issues Randall asserts in his § 2255 appeal are frivolous and do not entitle him to § 2255 relief. 28 U.S.C. § 2255. We have reviewed the record and Randall's brief and we find no error in the district court's dismissal of Randall's Bailey claims. United States v. Randall, No. 88-261 (E.D. La. Apr. 11, 1996).

Randall is not entitled to a certificate of appealability because he has not made a substantial showing of the violation of a constitutional right. See Drinkard v. Johnson, 97 F.3d 751, 755-56 (5th Cir. 1996). Randall's appeal is frivolous. 5th Cir.

No. 96-30457

No. 96-30763

- 3 -

R. 42.2. We caution Randall that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Randall is further cautioned to review all pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.