

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-30860

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KEVIN GRAVES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(96-CV-1637-A)

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December 13, 1996

Before KING, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Kevin Graves, #24037-034, appeals the district court's denial of his petition filed under 28 U.S.C. § 2255. Giving Graves the benefit of the doubt, we construe Graves' notice of appeal as a request for Certificate of Appealability (COA), as a COA is required in § 2255 cases under the Antiterrorism and Effective Death Penalty Act (the Act), Pub L. 104-132, 110 Stat.

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\*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

1214. See Fed. R. App. P. 22(b); see also the Act at § 102. A COA may be issued only if the defendant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(1).

In his appellate brief, Graves states that he "repeatedly" asked his counsel to appeal his sentence, but his counsel did not file a notice of appeal and, as a result, Graves was denied his right to an appeal. Following Graves' conviction, the district court advised him of his right to appeal and to have counsel appointed for him. In his § 2255 petition, as distinguished from his brief on appeal from the denial of that petition, Graves did not state that he had asked his counsel to file an appeal. We cannot fault the district court, therefore, in failing to conduct a hearing or in denying his § 2255 petition. Graves has not made a substantial showing of the denial of a constitutional right on this point or on the others that he raised. Accordingly, a COA is denied.

This appeal is DISMISSED.