



USA v. Boyd

2020 | Cited 0 times | D. Minnesota | July 14, 2020

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Amber M. Brennan, Assistant United States Attorney, UNITED STATES , 300 South Fourth Street, Suite 600, Minneapolis, Minnesota 55415, for plaintiff. Michael Osiris Boyd, Inmate No. 012528, Sherburne County Jail, 13880 Business Center Drive, Elk River, Minnesota, 55330-4608, pro se defendant. Defendant Michael Osiris Boyd seeks relief from his sentence pursuant to 28 U.S.C. § 2255, alleging ineffective assistance of counsel for failing to file a notice of appeal on . On August 6, 2019, the Court ordered an evidentiary hearing to determine The evidentiary hearing took place on March 4, 2020. file a notice of appeal on his behalf lacks credibility. Because Boyd fails to show that his

performance was ineffective, the Court will deny his § 2255 petition. UNITED STATES OF AMERICA,

Plaintiff, v. MICHAEL OSIRIS BOYD, Defendant.

Crim. No. 16-320 (JRT/BRT) MEMORANDUM OPINION AND ORDER

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BACKGROUND

I. FACTUAL BACKGROUND

Boyd was indicted by a grand jury with one count of being a felon in possession of James Becker of the Office of the Federal Defender , including sentencing. (Docket No. 4.)

Boyd entered a plea agreement on August 10, 2017. (Plea Agreement at 1, Aug. 10, 2017, Docket No. 53.) This agreement reflected a dispute between Boyd and the United States over whether ACCA sentencing enhancements under 18 U.S.C. § 924(e) applied to Boyd. (Id. at 3.) but not as to his sentence. (Id. at 8.)



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At sentencing, the Court agreed with Boyd that the ACCA enhancement did not apply and found that the applicable Guideline range for Boyd was 151 to 188 months imprisonment. (Sentencing Tr. at 11 12, 13, Dec. 21, 2017.) The Guideline range was higher than the statutory maximum of 120 months. (Id. at 13.) The Court granted a slight variance and sentenced Boyd to 110 months. (Am. Sentencing J. at 2, Feb. 20, 2018, Docket No. 81.) Boyd did not appeal his sentence. The United States initially filed a notice of appeal regarding the that ACCA sentencing enhancements did not apply, but later withdrew its appeal. On December 20, 2018, Boyd filed a pro se petition

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under 28 U.S.C. § 2255 to vacate, correct, or set aside his sentence. (Mot. to Vacate, Docket No. 86.) He argued that his counsel was constitutionally ineffective in two respects. First, Boyd argued that his counsel failed to file an appeal despite his request that his counsel do so. 6, Jan. 9, 2019, Docket No. 89.) Second, Boyd argues that his counsel gave him bad or insufficient advice during the plea stage. (Id. at 6-7.)

The Court, in an Order dated because his allegations d[id] was constitutionally unreasonable and are otherwise wholly incredible in light of the

record. 1

and ordered (Id.)

On July 8, 2019, Becker filed an affidavit, alleging that, on January 4, 2018 the day the sentencing judgment was filed, thus beginning the 14-day deadline to appeal Boyd affirmatively declined to appeal his sentence. (James Becker Aff. at 2, Docket No. 100.) Becker also averred that he made a contemporaneous note recording

1 3.) Boyd says that he understood this as meaning that

Becker would file a notice of appeal. (Id. at 3.)

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during that meeting, Id.) Because there was a question of fact, the Court ordered an evidentiary hearing to conduct a credibility determination. (Evidentiary Hearing Order, Aug. 6, 2019, Docket No. 104.)

II. THE HEARING

The evidentiary hearing took place on March 4, 2020. (Tr. at 1, Docket No. 119.) Boyd testified that,



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on December 21, 2017, immediately following his sentencing, I asked [Becker] in like a question form what he thought about direct appeal now that I d speak more later, that he (at 7, March 11, 2020, Docket No. 119.) Becker testified that, on the day of the sentencing hearing, he met with Boyd for approximately twenty minutes prior to going into the courtroom and, Sherburne County jail to then review what happened that day, the results of the

sentencing hearing, any issues related to a potential appea Id. at 40.) Becker does not recall speaking with Boyd immediately following the sentencing hearing; he (Id.)

On January 4, 2018, Becker visited Boyd at the Sherburne County Jail. (Id. at 8.) Boyd testified that, at this meeting, he told Becker he wanted to appeal and Becker

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So I was (Id. at 9.)

Becker testified that he discussed with Boyd the pros and cons of an appeal during their January 4, 2018 meeting. (Id. at 57.) Specifically, Becker recalls explaining to Boyd the risk of cross- my recitation of the potential pros and cons were. I believe he understood what I

intended by saying all those, and I believe that he agreed with me that it was a risk not worth taking, again in light of, significantly, in light of the actual sentence he ended up (Id. at 58.) seemed positive about the sentence he ended up receiving. (Id.) In addition to his

testimony, Becker provided notes taken during the January 4, 2018 meeting with Boyd; he testified that the equal sign with a slash mark through it, followed by the word government. (Id. at 56; Def. Ex. 2., Mar. 2, 2020, Docket No. 116.)

Following the January 4, 2018 meeting, Boyd never contacted Becker regarding the appeal. (Hrg Tr. at 61.) Becker testified that he was not aware that Boyd wanted to appeal until Boyd had filed his § 2255 petition, nearly one year after the sentencing. (Id. at 63.)

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DISCUSSION I. STANDARD OF REVIEW

Section 2255 permits a prisoner held in federal custody to move a sentencing court

reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and, if uncorrected, would result in a *Walking Eagle v. United States*, 742 F.3d 1079, 1081 82 (8 th



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Cir. 2014) (quoting *United States v. Apfel*, 97 F.3d 1074, 1076 (8th

Cir. 1996)). A defendant has the right to effective assistance of counsel at all critical stages of a criminal proceeding. See *Strickland v. Washington* *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970)). of the effective assistance guarantee of the Sixth Amendment is not to improve the

quality of legal representation . . . [but] simply to ensure that criminal defendants receive *Strickland*, 466 U.S. at 689.

To assistance, the Supreme Court has developed a two-prong test: (1) a petitioner must show under prevailing professional norms, and (2)

Id. at 687 88. Prejudice is presumed where *CASE 0:16-cr-00320-JRT-BRT Doc. 136 Filed 07/14/20 Page 6 of 9* *Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000). When a defendant has expressly requested an appeal, counsel performs deficiently by *Garza v. Idaho*, 139 S. Ct. 738, 746 (2019). In other words, when a defendant alleges ineffective assistance of counsel on the grounds an appeal, he would have timely *Id.* (quoting *Flores-Ortega*, 528 U.S. at 484).

II. FAILURE TO FILE APPEAL

the credibility of story of when and how he asked Becker to file a notice of appeal on his behalf

changed from his § 2255 petition and affidavit to his testimony during the evidentiary hearing. For example, at the evidentiary hearing, Boyd testified that he told Becker he wanted to appeal in the moments following the sentencing. Boyd neither mentioned this conversation in his § 2255 petition nor his affidavit; it was asserted for the first time during the evidentiary hearing. In fact, at the evidentiary hearing both Boyd and Becker agreed that they left the sentencing hearing with a mutual understanding that Becker would visit Boyd in jail on a later date, at which time they would discuss the potential for appeal.

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testimony about the January 4, 2018 meeting is further contradicted by that of Becker, who provides relevant notes indicating that he discussed the appeal process with Boyd, who decided not to pursue it. 2

Boyd about his appeal rights . . . Mr. Boyd affirmatively declined to exercise his right to

appeal, understanding that this means that no Notice of Appeal would be filed on his 5, Jul. 8, 2019, Docket No. 100.) His testimony at the hearing and the contemporaneous notes are consistent with



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that recollection. In addition, of a person who believed to have an appeal pending. For example, he did not contact

Becker once to inquire about the status of his appeal and Becker was not aware that Boyd purportedly wanted to appeal until his § 2255 petition was filed. For these reasons, the Court concludes that Boyd lacks credibility and rise to the level of ineffective assistance.

ORDER Based on the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that § 2255 petition [Docket No. 86] is DENIED.

2 The Court recognizes that Becker could have taken greater care in the legibility and clarity of his notes legibility and clarity. That said, considering the whole record before the Court,

less-than-ideal record keeping does not rise to the level of objectively unreasonable behavior.

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LET JUDGEMENT BE ENTERED ACCORDINGLY.

DATED: July 14, 2020 at Minneapolis, Minnesota. JOHN R. TUNHEIM Chief Judge United States District Court

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