

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-14826

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAY 28, 2008 THOMAS K. KAHN CLERK

D. C. Docket Nos. 04-02546-CV-T-30-EAJ & 03-00184-CR-T-3

CLARENCE JENKINS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(May 28, 2008)

Before CARNES and MARCUS, Circuit Judges, and DUBOSE,* District Judge.

PER CURIAM:

* Honorable Kristi K. DuBose, United States District Judge for the Southern District of Alabama, sitting by designation.

After hearing conflicting testimony and considering all of the evidence, the district court entered findings of fact, which are not clearly erroneous. In light of those findings of fact, the district court's decision rejecting the claim that trial counsel rendered ineffective assistance by failing to file a notice of appeal within ten days following sentencing is due to be affirmed on the basis of Devine v. United States, 520 F.3d 1286 (11th Cir. 2008). The facts of that case are materially indistinguishable from those of this case.¹

¹ The second issue on which we granted a certificate of appealability, involving the failure of trial counsel to file a Federal Rule of Appellate Procedure 4(b)(4) motion, has been abandoned because it was not raised in the Appellant's brief.