

United States Court of Appeals
For the Eighth Circuit

No. 19-2983

Jonathan A. Valentine

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: November 3, 2020

Filed: December 4, 2020

[Unpublished]

Before COLLOTON, KELLY, and ERICKSON, Circuit Judges.

PER CURIAM.

In 2018, Jonathan Valentine pleaded guilty to Hobbs Act robbery. He then filed a 28 U.S.C. § 2255 motion, in which he claimed, inter alia, that sentencing counsel failed to file a notice of appeal as directed. The district court summarily denied the motion as to that claim. This court granted a certificate of appealability as to Valentine's claim that sentencing counsel failed to file a notice of appeal.

Upon careful review, we conclude that further record development was warranted as to Valentine's claim. See Watson v. United States, 493 F.3d 960, 962-64 (8th Cir. 2007) (observing that, where petitioner's allegations, if true, amount to ineffective assistance of counsel, hearing must be held unless record affirmatively refutes assertions upon which claim is based; remanding for hearing on § 2255 claim that counsel failed to appeal, because there was no contradictory record evidence). The government agrees and requests a remand.

Accordingly, we vacate the district court's judgment only as to Valentine's claim that sentencing counsel failed to file a notice of appeal as directed, and remand the case to the district court for further proceedings.
