

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

November 15, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOE DEE STANG,

Defendant - Appellant.

No. 22-4125
(D.C. No. 2:10-CR-00712-TS-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **HARTZ**, and **MORITZ**, Circuit Judges.

Joe Dee Stang filed a pro se motion to vacate his guilty plea. He argued the government breached his plea agreement by violating the repayment schedule for his restitution obligation. The district court denied the motion, and Mr. Stang now appeals. The question before us is whether Mr. Stang may move to have his guilty plea vacated after he was sentenced. The answer is no, because a district court may not set aside a guilty plea after a defendant has been sentenced, except

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

as a consequence of a direct appeal or through a collateral proceeding. *See* Fed. R. Crim. P. 11(e) (“After the court imposes sentence, the defendant may not withdraw a plea of guilty . . . , and *the plea may be set aside only on direct appeal or collateral attack.*” (emphasis added)). Mr. Stang was sentenced in 2012 and he did not file his motion to vacate his guilty plea until 2022. This is not a direct appeal from Mr. Stang’s convictions or sentence, and he objects to the government’s argument that his motion to vacate his guilty plea should be construed as a 28 U.S.C. § 2255 motion. *See* Supp. Reply Br. at 4 (“The government’s suggestion that this court construe the motion as a § 2255 motion . . . violates Supreme Court precedent.”); *id.* (“Mr. Stang’s motion . . . should not be construed as a § 2255 motion.”). Because Rule 11(e) mandates that a guilty plea may only be set aside after sentencing on direct appeal or in a collateral proceeding, the district court lacked jurisdiction to consider Mr. Stang’s motion to vacate his guilty plea. *See United States v. Spaulding*, 802 F.3d 1110, 1127 (10th Cir. 2015) (holding that the limitations in Rule 11(e) are jurisdictional).

Accordingly, we remand to the district court with directions to vacate its denial order and enter an order dismissing Mr. Stang’s motion to vacate his guilty plea for lack of jurisdiction. We grant Mr. Stang’s motion for leave to proceed on appeal without prepayment of costs or fees.

Entered for the Court

Jerome A. Holmes
Chief Judge