

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7552

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BERNARD KEITH MARTIN,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Thomas E. Johnston, District Judge. (2:08-cr-00230-1; 2:10-cv-00444)

Submitted: March 19, 2013

Decided: March 28, 2013

Before WILKINSON and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Bernard Keith Martin, Appellant Pro Se. Gary L. Call, Steven Loew, Assistant United States Attorneys, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following his guilty plea to one count of possessing with intent to distribute oxycodone, in violation of 21 U.S.C. § 841(a)(1) (2006), and aiding and abetting his co-defendant in the same, in violation of 18 U.S.C. § 2 (2006), Bernard Keith Martin was sentenced to 151 months' imprisonment. This court affirmed Martin's conviction and dismissed his appeal of the sentence based on the appeal waiver included in his plea agreement. See United States v. Martin, 352 F. App'x 851 (4th Cir. 2009).

Martin subsequently filed a motion, pursuant to 28 U.S.C.A. § 2255 (West Supp. 2012), to vacate, set aside, or correct his sentence. In that motion, Martin raised only one claim: that trial counsel was constitutionally ineffective in failing to apprise Martin, prior to entry of the guilty plea, that pleading guilty would forfeit his right to appeal the district court's prior order denying his motion to suppress. See Tollett v. Henderson, 411 U.S. 258, 267 (1973); United States v. Bundy, 392 F.3d 641, 644 (4th Cir. 2004). The district court appointed counsel to represent Martin and held two evidentiary hearings on the motion. Martin's trial counsel testified at both of these hearings, while Martin testified only at the initial hearing before the magistrate judge. Although the district court ultimately adopted the magistrate judge's

recommendation to deny relief on the motion, the court also granted a certificate of appealability on this issue.

We have thoroughly reviewed the record in this case, including the transcripts of the evidentiary hearings, the documentary evidence adduced for those hearings, the magistrate judge's report and recommendation, and the district court's order. We discern no clear error in any of the district court's factual findings or credibility assessments and no reversible error in any of its dispositive analysis. See Fed. R. Civ. P. 52(a)(6); United States v. Roane, 378 F.3d 382, 395 (4th Cir. 2004). Accordingly, we affirm the district court's order. See United States v. Martin, Nos. 2:08-cr-00230-1; 2:10-cv-00444 (S.D.W. Va. Aug. 23, 2012). We deny the pending motion for the appointment of counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED