

No. 11-6303

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 23, 2012
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
ERNEST CATCHINGS,)
)
Defendant-Appellant.)
)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
TENNESSEE

Before: MERRITT, MARTIN, and GILMAN, Circuit Judges.

PER CURIAM. Ernest Catchings, a pro se federal prisoner, appeals the district court’s denial of his motion to withdraw his guilty plea in connection with his conviction of one count of identity theft in violation of 18 U.S.C. § 1028(a)(7). For the reasons stated below, this appeal is ordered consolidated with Catchings’s pending appeal in No. 11-6305.

In 2009, Catchings was indicted on one count of access-device fraud in violation of 18 U.S.C. § 1029(a)(2). A superseding indictment was filed in 2010, adding one count of identity theft in violation of 18 U.S.C. § 1028(a)(7). Pursuant to a plea agreement, Catchings agreed to plead guilty to identity theft. A plea hearing was held on November 15, 2010, and the district court accepted Catchings’s plea. Counsel subsequently withdrew and Catchings proceeded pro se. On February 8, 2011, two days prior to his scheduled sentencing hearing, Catchings filed a motion to withdraw his guilty plea, claiming that counsel induced him to plead guilty by promising that the government would release him on bond pending sentencing and would dismiss the access- device fraud charge. The district court denied the motion, concluding that there had been no indication that

Catchings's plea was not knowing or voluntary and the motion appeared to be filed not for meritorious reasons, but for the purpose of delay. The district court sentenced Catchings to fifty-one months of imprisonment.

Catchings then filed two notices of appeal. In his first notice of appeal, Catchings states that he is appealing the district court's "final judgment change of plea" that was entered on November 15, 2010. That appeal is designated as No. 11-6303. In his second notice of appeal, Catchings states that he is appealing the district court's "final judgment sentencing" entered on September 29, 2011. That appeal is docketed as No. 11-6305.

In case No. 11-6305, Catchings is represented by counsel who is arguing the merits of Catchings's underlining conviction and sentence. Based on Catchings's notice of appeal and brief in this case, Catchings is attempting to challenge the district court's decision denying his motion to withdraw his guilty plea. What Catchings did not realize is that by appealing the district court's final judgment, he would be permitted to challenge the district court's denial of his motion to withdraw his guilty plea. *See Crawford v. Roane*, 53 F.3d 750, 752 (6th Cir. 1995). Catchings was not required to file a second notice of appeal to preserve the motion to withdraw issue.

Given that both appeals have been fully briefed and that No. 11-6305 is scheduled to be orally argued before this Court on December 6, 2012, we deem that it would best to direct that appeals No. 11-6303 and No. 11-6305 be consolidated to allow Catchings's counsel to argue the withdraw issue before the December merits panel.

Therefore, the clerk of court is directed to consolidate appeals No. 11-6303 and No. 11-6305. The clerk is to immediately notify Mr. Christian J. Grostic, Catchings's attorney of record in appeal No. 11-6305 of this consolidation order so Mr. Grostic may prepare to argue both appeals on December 6, 2012.