

OCT 29 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DENNIS J. CLINTON, AKA Dennis Lee
Clinton,

Defendant - Appellant.

No. 13-50579

D.C. No. 8:08-cr-00176-DOC-7

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM JOSEPH FERRY,

Defendant - Appellant.

No. 13-50582

D.C. No. 8:08-cr-00176-DOC-5

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted October 20, 2015**
Pasadena, California

Before: IKUTA and OWENS, Circuit Judges and SESSIONS,*** District Judge.

Dennis Clinton and William Ferry appeal convictions for conspiracy, mail fraud, and wire fraud. Because the parties are familiar with the facts, we do not recount them except as necessary. Having jurisdiction under 28 U.S.C. § 1291, we reject the appellants' claims and affirm.

First, we decline to address Clinton's ineffective assistance of counsel claim. "As a general rule,' we do not review [these] claims on direct appeal" and neither exception to the rule applies here. *See United States v. Benford*, 574 F.3d 1228, 1231 (9th Cir. 2009).

Second, the district court did not abuse its discretion in excluding evidence of a co-defendant's dismissal as more prejudicial than probative. The dismissal was not probative of the appellants' guilt or innocence and evidence of the dismissal created an "undue tendency" that the jury would rely on an improper

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable William K. Sessions III, District Judge for the U.S. District Court for the District of Vermont, sitting by designation.

basis to decide the case. *See United States v. Gonzalez-Flores*, 418 F.3d 1093, 1098 (9th Cir. 2005); *United States v. Hitt*, 981 F.2d 422, 424 (9th Cir. 1992).

Third, the district court did not err when it held an ex parte hearing with the government concerning the co-defendant's dismissal. The district court properly reviewed the government's reasons for dismissing the co-defendant in camera to determine if the information was exculpatory, and as a result would need to be disclosed to the defendant. *See Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Alvarez*, 358 F.3d 1194, 1208–09 (9th Cir. 2004).

Fourth, the transcript of the ex parte hearing should remain sealed. After determining that the transcript was not relevant to the defendants' defense, and therefore not *Brady* material, the district court had no obligation to release it. *See Alvarez*, 358 F.3d at 1208.

Appellant's motion for judicial notice is denied.

AFFIRMED.