

UNITED STATES COURT OF APPEALS

Filed 10/9/96

TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

THOMAS FRANK DISTEFANO,

Defendant-Appellant.

No. 96-1178
(D.C. No. 95-M-3163)
(D. Colo.)

ORDER AND JUDGMENT*

Before SEYMOUR, Chief Judge, KELLY, and LUCERO, Circuit Judges.**

Mr. Distefano moved to vacate his sentence pursuant to 28 U.S.C. § 2255 and sought the return of forfeited property on double jeopardy grounds. We have reviewed the district court's order, which is further supported by United States v. Ursery, 116 S. Ct. 2135 (1996) and our decision in United States v. German, 76 F.3d 315 (10th Cir. 1996), and find no reversible error. We deny Mr. Distefano a certificate of appealability now

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

required by statute and dismiss the appeal for want of a “substantial showing of the denial of a constitutional right.” See 28 U.S.C. § 2253(c)(1)(B), (2); Lennox v. Evans, 87 F.3d 431, 433-34 (10th Cir. 1996).

APPEAL DISMISSED. The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge