

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 1 1997

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

ROBERT L. SIEDSMA,

Defendant-Appellant.

No. 96-3216
(D.C. No. 95-10034)
(D. Kan.)

ORDER AND JUDGMENT*

Before BRORBY, EBEL, and KELLY, Circuit Judges.**

Mr. Siedsma appeals from his conviction upon a plea of guilty of possession with intent to distribute methamphetamine. 21 U.S.C. § 841(a)(1). He was sentenced to 110 months imprisonment and now appeals based upon ineffective assistance of counsel. His claim is based on counsel's prediction of a base offense level of 28, whereas the base offense level used for sentencing was 32. The appeal must be dismissed because the

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

ineffectiveness claim must be brought in collateral proceedings under 28 U.S.C. § 2255. See United States v. Galloway, 56 F.3d 1239, 1242 (10th Cir. 1995) (en banc). This is not one of those rare ineffectiveness claims that may be reviewed on direct appeal, particularly given that Mr. Siedsma is represented on appeal by counsel below. See Beaulieu v. United States, 930 F.2d 805, 807 (10th Cir. 1991). All pending motions are DENIED.

APPEAL DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge