

FILED
United States Court of Appeals
Tenth Circuit

FEB 2 1990

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,
Respondent-Appellee,

V.

MICHAEL D. HATCHER,
Movant-Appellant.

No. 88-2412
(D.C. No. 88-3150)
(D. Kan.)

ORDER AND JUDGMENT*

Before HOLLOWAY, Chief Judge, SETH and McWILLIAMS, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Michael D. Hatcher appeals from the District Court's dismissal of his 28 U.S.C. § 2255 motion. In his motion Hatcher alleged that (1) the superseding indictment was defective for the reason that on the date of the robbery of the credit union, it ceased to exist as a separate entity and became part of another credit union; (2) the evidence presented at trial was insufficient regarding proof of the federally insured status of the credit union; and (3) the court lacked subject matter jurisdiction because the indictment alleged that the "deposits" of the credit union were insured rather than using the statutory language of "accounts." The trial court issued a Memorandum and Order rejecting each of the appellant's claims. We note additionally that we have held that an indictment need not follow the technical phraseology about insurance of deposits or accounts where the substance of the offense is charged such as by alleging that the bank was an insured F.D.I.C. member. See Kienlen v. United States, 379 F.2d 20, 22-23 (10th Cir. 1967).

For substantially the reasons as were stated by the District Court, the judgment is

A F F I R M E D. The mandate shall issue forthwith.

ENTERED FOR THE COURT

William J. Holloway, Jr.
Chief Judge