

FILED
United States Court of Appeals
Tenth Circuit

SEP 7 - 1989

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 89-3039
	)	(Dist. Ct. No. 88-3094-S)
	)	(D. Kansas)
GARY L. WILSON,	)	
	)	
Defendant-Appellant.	)	

ORDER AND JUDGMENT*

Before MCKAY, TACHA, and EBEL, 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. Therefore, the cause is ordered submitted without oral argument.

Appellant Gary L. Wilson was convicted in the United States District Court for the District of Kansas of kidnapping a young woman and transporting her in interstate commerce for sexual gratification in violation of 18 U.S.C. § 1201, and sentenced to life imprisonment. Appellant subsequently filed a motion to vacate the sentence pursuant to 28 U.S.C. § 2255. The district

* 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.

court denied that motion, and appellant filed a motion for reconsideration. The district court denied that motion, and appellant appeals.

Appellant raises four issues on appeal: (1) whether the sentencing court erred in refusing to exercise its discretion at the time of sentencing to determine if appellant would derive benefit from treatment under the Youth Corrections Act ("YCA"); (2) whether appellant was denied effective assistance of counsel; (3) whether appellant was denied a fair trial; and (4) whether the sentencing judge was biased. We reject appellant's second issue for substantially the same reasons articulated by the district court in its orders of July 6, 1988 and February 6, 1988. We also reject appellant's third and fourth issues because he did not raise them in his section 2255 petition before the district court.

Finally, we need not address appellant's first issue of whether the sentencing court erred in failing to determine whether appellant would have benefited from the YCA. The YCA was designed to promote rehabilitation of youthful offenders through a program that would cure rather than accentuate the antisocial tendencies that lead to the commission of crime. See Dorszynski v. United States, 418 U.S. 424, 431-36 (1974); Annotation, Youth Corrections Act, 11 A.L.R. Fed. 499 (1972); Annotation, Youth Corrections Act, 54 A.L.R. Fed. 382 (1981). Thus any error committed by the sentencing court back in 1967, when appellant was convicted, is now moot because appellant has no possibility whatsoever of deriving any of the benefits contemplated by the YCA even if a

sentencing court were now to determine that he might have derived benefit under the program when he was originally sentenced.

For the foregoing reasons, we **AFFIRM** the decision of the district court dismissing appellant's habeas petition. The mandate shall issue forthwith.

Entered for the Court

David M. Ebel
Circuit Judge