

FILED
United States Court of Appeals
Tenth Circuit

FEB 28 1990

ROBERT L. HOECKER
Clerk

**UNITED STATES COURT OF APPEALS
TENTH CIRCUIT**

MICHAEL F. STONE,)
)
Defendant-Appellant,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee.)

No. 89-5120
(N.D. Oklahoma)
(86-CR-03-E)

ORDER AND JUDGMENT*

Before MCKAY, SEYMOUR, 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 case is ordered submitted without oral argument.

In the middle of a trial charging the appellant with conspiracy to commit mail fraud and violation of the equity skimming statute, 12 U.S.C. § 1709-2, the appellant changed his plea from not guilty to guilty of the offenses of conspiracy to commit mail fraud, 18 U.S.C. § 371, and violating the mail fraud statute, 18 U.S.C. § 1341. The other charges against him were

* 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.

dismissed, including all charges of violation of the equity -
skimming statute, 12 U.S.C. § 1709-2. On direct appeal to this
court, appellant's challenge to the validity of the plea was
rejected. United States v. Michael F. Stone, No. 86-2517 (10th
Cir. Jan. 12, 1988).¹

Appellant now brings this action pursuant to 28 U.S.C.
§ 2255. Appellant adopts the issues and arguments raised in his
co-defendant Rhonda Arterburn's appeal of the denial of her § 2255
motion.² Holding that the asserted § 2255 issues had been waived
by appellant's guilty plea or addressed or waived by previous
appeals, the district court denied appellant's motion as to all
issues except as to the adequacy of trial counsel. The district
court ordered a evidentiary hearing on this matter which is now
scheduled for March 1990. Appellant's appeal, taken before that
date, is premature as to this issue.

Because the judgment of the district court is not final as
to all issues we do not have jurisdiction to hear this appeal. See
Gray v. Swenson, 430 F.2d 9, 11 (8th Cir. 1970); Stewart v.
Bishop, 403 F.2d 674 (8th Cir. 1968); 28 U.S.C. § 1291.
Therefore, the appeal is DISMISSED. The mandate shall issue forthwith.

Entered for the Court

David M. Ebel
Circuit Judge

¹ Appellant and a co-defendant, Deborah L. Stone also appealed
the district court's striking their Rule 35(a) motion. 10th Cir.
File Nos. 86-2796, 86-2797. The appeals were dismissed pursuant
to Rule 42.1 for failure to file timely briefs.

² In United States v. Arterburn, No. 88-2334 (10th Cir. October
31, 1989), this court affirmed the denial of Arterburn's motion
pursuant to 28 U.S.C. § 2255.