

FILED
United States Court of Appeals
Tenth Circuit

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

APR 22 1992

ROBERT L. HOECKEE
Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 91-6393
	)	(D.C. No. CR-89-240-R)
	)	(W.D. Oklahoma)
JOHN BRUCE BOYD,	)	
	)	
Defendant-Appellant.	)	

ORDER AND JUDGMENT*

Before **MOORE, TACHA, and BRORBY**, 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.

After failing to appeal from the imposition of sentence following his plea of guilty to bank robbery and use of a firearm during the commission of a crime of violence, defendant filed in

*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.

the district court a pleading he denominated as a "Motion to Correct Present Sentence Pursuant to Title 18 U.S.C. Section 3742(a)(2)(3)." The district court denied the motion on the ground § 3742(a) pertains only to appeal in the court of appeals and does not vest the district court with jurisdiction to "correct" a sentence. The district court was right.

The statute defendant sought to invoke vests the appellate court with jurisdiction to entertain an appeal of a sentence. It provides no remedy in the district court, and defendant's attempt to seek one was without foundation.

Even if the district court had jurisdiction to entertain defendant's motion, his failure to file a timely notice of appeal deprives this court of jurisdiction over the appeal. A notice of appeal filed by a defendant in a criminal case must be filed in the district court within ten days of the order appealed from. Fed. R. App. P. 4(b). Defendant's notice was not filed until twenty-eight days after the district court's order, leaving us with no choice but to dismiss this appeal. United States v. Leonard, 937 F.2d 494 (10th Cir. 1991).

DISMISSED.

Entered for the Court

**John P. Moore
Circuit Judge**