

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 12, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALEXANDER KANEHOALAN LOUIS,
III,

Defendant - Appellant.

No. 21-3153
(D.C. Nos. 6:20-CV-01161-EFM &
6:18-CR-10140-EFM-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MATHESON, KELLY, and ROSSMAN**, Circuit Judges.**

Defendant-Appellant Alexander Kanehoalan Louis, III pled guilty to being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1), and possession with intent to distribute 50 grams or more of methamphetamine mixture, 21 U.S.C. § 841(a)(1) & (b)(1)(B). He was sentenced to 87-month concurrent sentences, and the judgment was entered on July 9, 2019. No direct appeal was taken. On June 19, 2020, Mr. Louis filed a pro-se 28 U.S.C. § 2255 motion claiming ineffective assistance of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

counsel. Counsel was appointed, briefing completed, and an evidentiary hearing held. The district court denied relief as well as a certificate of appealability (COA). See United States v. Louis, No. 18-10140, 2021 WL 2681051, at *6–7 (D. Kan. June 30, 2021). The district court rejected Mr. Louis’s claims that his counsel was ineffective for not (1) raising a claim under Rehaif v. United States, 139 S. Ct. 2191 (2019), (2) filing a notice of appeal on his behalf, and (3) investigating the circumstances surrounding his traffic stop and filing a motion to suppress. Louis, 2021 WL 2681051, at *3–6; see Strickland v. Washington, 466 U.S. 668, 687 (1984) (requiring that the defendant show both deficient performance and prejudice).

Mr. Louis’s appointed appellate counsel has moved to withdraw from representation and filed an Anders brief, finding no viable appellate argument. See Anders v. California, 386 U.S. 738, 744 (1967). He informs the court that Mr. Louis cannot make a substantial showing of the denial of a constitutional right as required for the grant of a COA. 28 U.S.C. § 2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 483–84 (2000). To make this showing, Mr. Louis “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Saiz v. Ortiz, 392 F.3d 1166, 1171 n.3 (10th Cir. 2004) (quoting Tennard v. Dretke, 542 U.S. 274, 282 (2004)). Mr. Louis was notified of his counsel’s Anders brief, but did not file a response. See Anders Brief Letter, United States v. Louis, No. 21-3153 (10th Cir. Nov. 4, 2021). Exercising jurisdiction under 28 U.S.C. § 1291, we deny a COA and dismiss the appeal.

If a defendant’s counsel has determined that any appeal of his client’s case would be “wholly frivolous,” he may move to withdraw and file a brief explaining why an appeal would lack merit. Anders, 386 U.S. at 744. Under Anders, we review the case and counsel’s brief to make an independent determination of an appeal’s merit. See United States v. Griffith, 928 F.3d 855, 863–64 (10th Cir. 2019). If we agree that the appeal is frivolous, we may grant the motion to withdraw and dismiss the appeal. Id. at 864.

The record clearly shows that reasonable jurists could not debate the district court’s findings and conclusions. The district court noted the lack of prejudice from not filing a Rehaif claim given the inevitable outcome. Louis, 2021 WL 2681051, at *3–4; see also United States v. Trujillo, 960 F.3d 1196, 1208 (10th Cir. 2020). It also found that counsel consulted with Mr. Louis about appealing and Mr. Louis did not explicitly ask her to file an appeal. Louis, 2021 WL 2681051, at *4–5; 1 R. 223–25, 231–36 (trial attorney’s testimony); 1 R. 259–67 (Mr. Louis’s testimony); see Roe v. Flores-Ortega, 528 U.S. 470, 478 (2000). Likewise, the district court found that counsel did, in fact, investigate the traffic stop that led to Mr. Louis’s arrest and reasonably advised him that the chances of a motion to suppress succeeding were very low. Louis, 2021 WL 2681051, at *6; 1 R. 207–14.

We GRANT counsel's motion for leave to withdraw, DENY a COA, and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge