

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

No: 20-1513

Michael Wayne Wadena

Appellant

v.

United States of America

Appellee

Appendix  
A

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Appeal from U.S. District Court for the District of Minnesota  
(0:19-cv-00470-JRT)

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**ORDER**

The petition for rehearing by the panel is denied.

May 07, 2020

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

\_\_\_\_\_  
No: 20-1513  
\_\_\_\_\_

Appendix  
B

Michael Wayne Wadena

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

\_\_\_\_\_  
Appeal from U.S. District Court for the District of Minnesota  
(0:19-cv-00470-JRT)  
\_\_\_\_\_

**JUDGMENT**

Before LOKEN, COLLOTON, and KOBES, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction.

April 03, 2020

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

\_\_\_\_\_  
/s/ Michael E. Gans



**United States Court of Appeals**  
***For The Eighth Circuit***  
Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329  
**St. Louis, Missouri 63102**

**Michael E. Gans**  
*Clerk of Court*

**VOICE (314) 244-2400**  
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**[www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)**

March 11, 2020

Mr. Michael Wayne Wadena  
U.S. PENITENTIARY  
20612-041  
P.O. Box 1033  
Coleman, FL 33521-1033

Appendix  
C

RE: 20-1513 Michael Wadena v. United States

Dear Mr. Wadena:

The district court clerk has transmitted a notice of appeal in this matter. In accordance with Rule 24(a), Federal Rules of Appellate Procedure, the appeal has been docketed under the number indicated. Please include the caption and the case number on all correspondence or pleadings submitted to this court.

The notice of appeal has been treated as an application for certificate of appealability in accordance with Rule 22(b) of the Federal Rules of Appellate Procedure. It will be forwarded to a panel of judges for consideration. You will be advised of any action taken in the case.

Please note that service by pro se parties is governed by Eighth Circuit Rule 25B. A copy of the rule and additional information is attached to the pro se party's copy of this notice.

On June 1, 2007, the Eighth Circuit implemented the appellate version of CM/ECF. Electronic filing is now mandatory for attorneys and voluntary for pro se litigants proceeding without an attorney. Information about electronic filing can be found at the court's web site [www.ca8.uscourts.gov](http://www.ca8.uscourts.gov). In order to become an authorized Eighth Circuit filer, you must register with the PACER Service Center at <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-regform.pl>. Questions about CM/ECF may be addressed to the Clerk's office.

Michael E. Gans  
Clerk of Court

CBO

Enclosure(s)

cc: Ms. Deidre Yvonne Aanstad  
Ms. Kate M. Fogarty

District Court/Agency Case Number(s): 0:19-cv-00470-JRT



There is not an automatic right to appeal a § 2255 motion. Two requirements must be met before an appeal may be heard: (1) the judge must enter a final order that is adverse to you; and (2) you must receive a certificate of appealability. See Rule 11, Rules Governing § 2255 Proceedings; 28 U.S.C. § 2253.

A certificate of appealability is an order authorizing you to file an appeal. The district court is required to issue or deny a certificate of appealability when it enters the final order in your case that is adverse to you, but may first direct the parties to submit arguments on whether the certificate of appealability should issue. See Rule 11, Rules Governing § 2255 Proceedings. If the district court issues you a certificate of appealability in its final order, then you may proceed and file an appeal. If the certificate of appealability is denied, then you must seek a certificate of appealability from the Eighth Circuit Court of Appeals under Rule 22(b) of the Federal Rules of Appellate Procedure.

### **How do I file an appeal?**

After you receive a certificate of appealability, you must file a notice of appeal and indicate you are appealing a final judgment denying § 2255 relief. A notice of appeal is included in the appendix to this Guidebook. There is a filing fee of \$505.00 for an appeal. If you cannot afford to pay this fee, you can apply to proceed without prepaying the fee (which is called proceeding in forma pauperis or IFP) by completing the AO239 form "Application to Proceed in District Court Without Prepaying Fees or Costs." The last page of the application, regarding prisoner trust account information, is relevant and should be completed. Even though you are seeking IFP status on

**STATES OF AMERICA, Plaintiff, v. MICHAEL WAYNE WADENA, Defendant.**  
**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA**  
**2019 U.S. Dist. LEXIS 120725**  
**Criminal No. 16-153 (JRT/JTH)**  
**July 19, 2019, Decided**  
**July 19, 2019, Filed**

**Editorial Information: Prior History**

United States v. Wadena, 895 F.3d 1075, 2018 U.S. App. LEXIS 19790 (8th Cir. Minn., July 18, 2018)

**Counsel** {2019 U.S. Dist. LEXIS 1} For Plaintiff: Erica H. MacDonald, United States Attorney, and Deidre Y. Aanstad, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, Minneapolis, MN.

Michael Wayne Wadena, Defendant, Pro se, Coleman, FL.

**Judges:** JOHN R. TUNHEIM, Chief United States District Judge.

Opinion

**Opinion by:** JOHN R. TUNHEIM

Opinion

Appendix  
D

**Order Denying Defendant's 28 U.S.C. § 2255 Motion**

In 2016, Defendant Michael Wayne Wadena pleaded guilty to being a Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1). (Plea Agreement at 1, Aug. 5, 2016, Docket No. 26.) At the time, Wadena had three previous convictions in Minnesota state courts, two for Third Degree Assault and one for a Fourth Degree Controlled Substance offense. (*Id.* at 3.)

The United States and Wadena disagreed over whether Wadena's prior convictions subjected him to the Armed Career Criminal Act's ("ACCA") fifteen-year mandatory minimum sentence. The ACCA's mandatory minimum applies when a federal defendant has at least three prior convictions, each conviction being for either a "serious drug offense" or a "violent felony." 18 U.S.C. § 924(e)(1). A serious drug offense is defined as one "involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . . for which a maximum{2019 U.S. Dist. LEXIS 2} term of imprisonment of ten years or more is prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii).

The United States argued that Wadena's three convictions qualified under the ACCA and that Wadena was therefore subject to the fifteen-year minimum sentence. (USA's Position on Sentencing at 6-12, May 5, 2017, Docket No. 42.) Wadena disagreed, and argued that the ACCA did not apply. (Def.'s Position on Sentencing at 6-16, Apr. 25, 2017, Docket No. 37.) As relevant here, Wadena admitted that his controlled substance conviction came with a statutory maximum of fifteen years imprisonment but argued that the conviction should not serve as an ACCA predicate because the Minnesota Sentencing Guidelines calculation used at his state sentencing prescribed a sentence below ten years. (*Id.* at 16.)

At the sentencing hearing, the Court overruled Wadena's objection to the ACCA enhancements,

finding that clear Eighth Circuit and Supreme Court precedent foreclosed his guidelines-based argument. (Tr. at 10, May 19, 2017, Docket No. 57.) Finding that Wadena was subject to the ACCA's fifteen-year minimum, the Court sentenced Wadena to 180 months imprisonment. (Sentencing J. at 2, May 11, 2017, Docket No. 48.)

Wadena now files a 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct his Sentence.{2019 U.S. Dist. LEXIS 3} (Pro Se Motion to Vacate, Feb. 25, 2019, Docket No. 68.) He asserts that the Court incorrectly concluded that his controlled substance conviction was a serious drug offense and that the Court incorrectly applied the ACCA minimum. He argues that because the Minnesota Sentencing Guidelines recommended a sentence below ten years, and because Minnesota courts must usually stay within the guidelines range, his conviction does not qualify as a serious drug offense.

Whatever the soundness of Wadena's argument then and now, the Court is bound by precedent to find that his controlled substance conviction qualifies as an ACCA predicate. It is clear that his statute of conviction carries with it a statutory maximum of fifteen years imprisonment. Minn. Stat. § 152.024 subd. 3. And, although the top of Wadena's sentencing guidelines calculation was far below ten years, the Supreme Court has made clear that "the phrase 'maximum term of imprisonment . . . prescribed by law' for the 'offense' was not meant to apply to the top sentence in a guidelines range" but instead was meant to apply to "to the maximum term prescribed by the relevant criminal statute." *United States v. Rodriguez*, 553 U.S. 377, 390-91, 128 S. Ct. 1783, 170 L. Ed. 2d 719 (2008). See also *Griffin v. United States*, 617 F. App'x 618, 624-25 (8th Cir. 2015) (holding that the statutory maximum determines whether a conviction{2019 U.S. Dist. LEXIS 4} qualifies as a serious drug offense); *United States v. Bynum*, 669 F.3d 880, 885 n. 3 (8th Cir. 2012) (discussing Minn. Stat. § 152.024 and its applicability as a serious drug offense). Wadena argues that Minnesota sentencing courts have limited discretion in departing from guideline ranges, and that his maximum sentence is therefore less than ten years. But the *Rodriguez* decision found that limited discretion dispositive, holding that "the top sentence in a guidelines range is generally not really the 'maximum term . . . prescribed by law' for the 'offense' because guidelines systems typically allow a sentencing judge to impose a sentence that exceeds the top of the guidelines range under appropriate circumstances." *Rodriguez*, 553 U.S. at 390.

Wadena also relies on *United States v. Haltiwanger*, 637 F.3d 881 (8th Cir. 2011), to argue that the Eighth Circuit does consider a defendant's specific possible sentencing outcomes in determining whether a prior conviction qualifies as a serious drug offense. However, the Eighth Circuit has distinguished *Haltiwanger* from the present situation because *Haltiwanger*'s maximum statutory sentence was dependent on whether he was a repeat offender. *United States v. Jefferson*, 822 F.3d 477, 481 (8th Cir. 2016). Here, Wadena's maximum state sentence was clearly prescribed at fifteen years and was not dependent on Wadena meeting any prerequisites. Thus, *Haltiwanger* is inapplicable.{2019 U.S. Dist. LEXIS 5}

Because the Court accurately applied *Rodriguez* and its protégé, the Court did not err in finding that Wadena's Minnesota controlled substance conviction was an ACCA predicate offense. Accordingly, the Court did not err in finding that Wadena was subject to the ACCA's fifteen-year mandatory minimum sentence. The Court will therefore deny Wadena's § 2255 Motion.

The United States requests that the Court deny Wadena a certificate of appealability. The Court may grant a certificate of appealability only where a petitioner has made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2); *Copeland v. Washington*, 232 F.3d 969 (8th Cir. 2000). To make such a showing, the issues must be debatable among reasonable jurists, a court must be able to resolve the issues differently, or the case must deserve further proceedings.

See *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994). The Court finds that it is unlikely that another court would decide the issues raised in this § 2255 motion differently. For this reason, the Court concludes that **Wadena** has failed to make the required substantial showing of the denial of a constitutional right, and the Court denies a certificate of appealability.

#### **ORDER**

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

- {2019 U.S. Dist. LEXIS 6}1. Defendant Wadena's Motion to Vacate under 28 U.S.C. § 2255 [Docket No. 68] is **DENIED**;
2. Wadena's Motion to Compel the Government to Respond [Docket No. 75] is **DENIED** as moot.
3. No certificate of appealability is granted.

U.S. District Court

U.S. District of Minnesota

**Notice of Electronic Filing**

The following transaction was entered on 2/5/2020 at 2:30 PM CST and filed on 2/5/2020

**Case Name:** USA v. Wadena

**Case Number:** 0:16-cr-00153-JRT

**Filer:**

**Document Number:** 83(No document attached)

**Docket Text:**

(Text only) ORDER granting [82] Motion Requesting the Court to Reopen the Time to File an Appeal or In the Alternative A Notice of Appeal as to Michael Wayne Wadena (1). Deadline for Defendant to file a Notice of Appeal is extended to March 18, 2020. Signed by Chief Judge John R. Tunheim on 2/5/2020. (HAZ)