

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 15, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK E. SELLS,

Defendant - Appellant.

No. 23-5101
(D.C. No. 4:04-CR-00057-TCK-1)
(N.D. Okla.)

ORDER

Before MATHESON, McHUGH, and MORITZ, Circuit Judges.

Appellant Mark E. Sells—an Oklahoma state prisoner appearing pro se—filed a notice of intent to appeal in which he identifies “three (3) claimed violations of Sells Federal Plea Agreement” and requests that this court review those claimed violations. Upon consideration of the notice of appeal, the district court docket, and the applicable law, the court dismisses the appeal for the reasons set forth below.

First, although Sells identifies in his notice of appeal three alleged violations of his federal plea agreement, he does not “designate the judgment, order, or part thereof” in which the district court addressed those alleged violations, *see* Fed. R. App. P. 3(c)(1)(B), and thus does not provide “sufficient notice to other parties and the courts” of the order

he seeks to appeal. *See Smith v. Barry*, 502 U.S. 244, 248 (1992) (holding that the designation requirement of Rule 3(c)(1)(B) is jurisdictional).

Second, Sells' notice of appeal is not timely to appeal any order on the district court's docket. In a criminal case, a defendant must file a notice of appeal within 14 days after the district court enters the judgment or order he intends to appeal. *See Fed. R. App. P. 4(b)(1)(A)*. In a proceeding under 28 U.S.C. § 2255 motion, the defendant must file a notice of appeal within 60 days after the district court enters the order or judgment from which the defendant seeks to appeal. *Fed. R. App. P. 4(a)(1)(B)*; *United States v. Pinto*, 1 F.3d 1069, 1070 (10th Cir. 1993). In a proceeding under 28 U.S.C. § 2254, the petitioner must file his notice of appeal within 30 days after the district court enters the order or judgment from which the petitioner seeks to appeal. *Fed. R. App. P. 4(a)(1)(A)*; *see Manco v. Werholtz*, 528 F.3d 760, 762 (10th Cir. 2008).

For his part, Sells affirmatively states in his notice of appeal: "This is NOT a 'Habeas' request! And should NOT be construed or 're-characterized' as a 'Habeas' request! Sells ONLY seeks review of the 'terms of [his] Plea Agreement, and, if violated, enforcement of original Plea agreement.'" [ECF No. 86].

Sells' appeal is untimely from any order on the district court's docket regardless whether the applicable time limits for appeal are those for a criminal appeal or a civil habeas appeal. *See Fed. R. App. P. 4*. The court holds that dismissal of this appeal is appropriate under the circumstances here presented: the appeal implicates both judicial

and administrative resources and the appeal is untimely under any standard that may be applicable to any order on the district court's docket.

APPEAL DISMISSED.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

September 15, 2023

Mr. Mark E. Sells
Lawton Correctional Facility
8607 SE Flower Mound Road
Lawton, OK 73501-9700
#546774

RE: 23-5101, United States v. Sells
Dist/Ag docket: 4:04-CR-00057-TCK-1

Dear Appellant:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

cc: Leena Alam
Vani Singhal
Russell E. Smoot

CMW/at

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 16, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK E. SELLS,

Defendant - Appellant.

No. 23-5101
(D.C. No. 4:04-CR-00057-TCK-1)
(N.D. Okla.)

ORDER

Before MATHESON, McHUGH, and MORITZ, Circuit Judges.

This matter is before the court on appellant Mark E. Sells' *Petition to Court to Re-Hear Appeal 'En Banc'*.

The panel denies panel rehearing. In addition, the Clerk transmitted the petition for rehearing en banc to all judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court requested that the court be polled. Accordingly, the court denies the petition for rehearing en banc.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**