

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case No. 05-10111-01-JTM

JUAN DELGADILLO,  
Defendant.

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MEMORANDUM AND ORDER

This matter is before the court on the defendant Juan Delgadillo's motion to vacate his sentence under 28 U.S.C. § 2255. (Dkt. No. 51). The court has previously denied Delgadillo's motion in most respects, (Dkt. No. 60), saving only that portion of the motion alleging that his counsel was ineffective for failing to file a notice of appeal. As to that issue, the court noted that Delgadillo specifically alleged his counsel failed to file notice of appeal despite his request, and therefore set the matter for an evidentiary hearing.

An evidentiary hearing having been duly held, the court was presented with testimony from both Delgadillo and his former counsel James Turner. Asked whether his client had asked him to file a notice of appeal after the sentencing, Turner testified that he had not done so. Asked if his client had instructed him to file an appeal prior to the sentencing, Turner testified that he had not done so.

Also submitted to the court was Government Exhibit 1, a letter from Delgadillo to Turner, dated August 8, 2006, which is primarily devoted to asking Turner to send him a copy of the journal

entry, but which also includes a statement that Delgadillo wanted to appeal. However, the sentencing had taken place on June 29, 2006. Turner testified that at no time during the relevant time period for filing an appeal did he ever have any communication from Delgadillo requesting that he file an appeal.

As the court noted at the conclusion of the evidentiary hearing, the evidence supports a denial of the sole remaining ground for relief advanced by Delgadillo. The court specifically finds that on this issue James Turner testified clearly, credibly, and convincingly. The court finds that counsel was not given any timely instruction to file a notice of appeal, and his failure to file an appeal under the circumstances of the case does not represent any departure from the constitutionally-required standard of representation

IT IS ACCORDINGLY ORDERED this 25<sup>th</sup> day of July, 2007, that the remaining portion of defendant's Motion to Vacate (Dkt. No. 51) is hereby denied.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE