

Westlaw

42 Fed.Appx. 250

42 Fed.Appx. 250, 2002 WL 1365612 (C.A.10 (Kan.))

(Not Selected for publication in the Federal Reporter)

(Cite as: 42 Fed.Appx. 250, 2002 WL 1365612 (C.A.10 (Kan.)))

Page 1

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals, Tenth Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
Anthony HODGES, Defendant-Appellant.
No. 02-3006.

June 25, 2002.

Before SEYMOUR, HENRY, and BRISCOE, Circuit Judges.

ORDER AND JUDGMENT^{FN*}

FN* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

BRISCOE, Circuit Judge.

**1 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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Anthony Hodges seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. We deny a certificate of appeal-

ability and dismiss the appeal.

Hodges was convicted of possession with intent to distribute crack cocaine, 21 U.S.C. § 841(a)(1), and sentenced to a term of imprisonment of 151 months and a term of supervised release of five years. His conviction was affirmed in **251 United States v. Hodges*, 208 F.3d 227 (10th Cir.2000) (unpublished). Hodges filed his § 2255 motion on March 9, 2001, claiming the federal district court lacked subject matter jurisdiction. The district court denied the motion on March 26, 2001.^{FN1}

FN1. On August 16, 2001, Hodges moved to supplement his § 2255 action. The district court transferred the motion to this court as an unauthorized second or successive application. In response to this court's notice, Hodges filed a motion for leave to file a second or successive motion, claiming his sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). We denied the motion.

On appeal, Hodges contends "[t]he District Court was without subject matter jurisdiction to indict, try, convict, sentence, and imprison petitioner." Br. attach. at 1. He argues (1) that the prosecution failed to prove a nexus between his conduct and interstate commerce, (2) that the crime was not committed on federal property, and (3) that the state did not cede jurisdiction.

Nexus between conduct and interstate commerce— "[T]he conduct regulated by the Drug Act clearly implicates interstate commerce, and Congress made explicit findings explaining the conduct's 'substantial and direct effect upon interstate commerce.' " *United States v. Wacker*, 72 F.3d 1453, 1475 (10th Cir.1995). "Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic." 21 U.S.C. §

42 Fed.Appx. 250
42 Fed.Appx. 250, 2002 WL 1365612 (C.A.10 (Kan.))
(Not Selected for publication in the Federal Reporter)
(Cite as: 42 Fed.Appx. 250, 2002 WL 1365612 (C.A.10 (Kan.)))

801(6).

Crime not committed on federal property-Article I, section 8, of the United States Constitution“empower[s] Congress to create, define and punish crimes, irrespective of where they are committed.” *United States v. Collins*, 920 F.2d 619, 629 (10th Cir.1990).

State did not cede jurisdiction-Because under 18 U.S.C. § 3231 federal district courts are explicitly vested with jurisdiction over all offenses against the laws of the United States, *see id.*, the federal government is not required to show that the state ceded jurisdiction. *See United States v. Daily*, 921 F.2d 994, 998 (10th Cir.1990), *disapproved on other grounds*, *United States v. Wiles*, 102 F.3d 1043, 1054-55 (10th Cir.1996).

The district court had jurisdiction over the charges brought against Hodges. As Hodges has failed to make “a substantial showing of the denial of a constitutional right,”²⁸ U.S.C. § 2253(c)(1)(B), we DENY a certificate of appealability and DISMISS the appeal. The mandate shall issue forthwith.

C.A.10 (Kan.),2002.
U.S. v. Hodges
42 Fed.Appx. 250, 2002 WL 1365612 (C.A.10 (Kan.))

END OF DOCUMENT