

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. 17-10096-JTM
Civil No. 19-1224-JTM

SYCARR GREENLEY,
Defendant.

MEMORANDUM AND ORDER

Defendant Sycarr Greenley pled guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). (Dkt. 63). The court dismissed four other counts against the defendant, and sentenced him to 120 months imprisonment. (Dkt. 229). The matter is now before the court on defendant's Motion to Vacate (Dkt. 83) his sentence pursuant to 28 U.S.C. § 2255.

In this motion, defendant alleges that his lawyer was ineffective in failing to appeal his sentence or to advise him of his right to appeal. Defendant specifically alleges that he instructed counsel to file an appeal so that he could continue to challenge the denial of his motion to suppress. (Dkt. 52 at 135-36). Defendant also argues his sentence was calculated erroneously. A criminal defendant possesses a fundamental right to appeal, and has the ultimate right of decision as to an appeal. *See generally*

Rodriguez v. United States, 395 U.S. 327 (1967); *Roe v. Flores-Ortega*, 528 U.S. 470, 479-80 (2000). A claim that counsel has ignored a directive to file an appeal represents a potential deprivation of defendant's constitutional rights, and may require resolution by evidentiary hearing. See *United States v. Pugh*, 2019 WL 917019, *3 (D. Kan. Feb. 25, 2019) (discussing standards). To effectively resolve the defendant's motion, the government will respond by February 25, 2020.

IT IS SO ORDERED this day of February, 2020.

J. Thomas Marten

J. Thomas Marten, Judge