

February 24, 2010

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker  
Clerk of Court

TENTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOEL PARRA,

Defendant - Appellant.

No. 09-8091

(D. Wyoming)

(D.C. No. 1:06-CV-00183-WFD)

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**ORDER AND JUDGMENT\***

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Before **HARTZ, SEYMOUR, and ANDERSON**, Circuit Judges.

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We granted a certificate of appealability to permit Joel Antonio Parra to appeal the dismissal of his motion for habeas relief under 28 U.S.C. § 2255. *See* 28 U.S.C. § 2253(c)(1)(A) (requiring certificate of appealability to appeal denial of motion under § 2255). Mr. Parra challenges the ruling of the United States District Court for the District of Wyoming that his motion did not adequately allege a claim of ineffective assistance of counsel. But if one liberally construes

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\*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. This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

his pro se motion, *see Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (requiring liberal construction of pro se pleadings), it alleges (1) that his attorney failed to consult with him about pursuing an appeal and (2) that his attorney failed to honor his request to file an appeal. As conceded by the government in its candid and helpful answer brief in this court, dismissal of those claims was improper. *See Roe v. Flores-Ortega*, 528 U.S. 470 (2000); *United States v. Guerrero*, 488 F.3d 1313 (10th Cir. 2007). In particular, Mr. Parra could prevail on those claims without showing that he had a meritorious issue on appeal.

We REVERSE the judgment of the district court and remand for further proceedings on Mr. Parra's claims of ineffective assistance of counsel. We GRANT the government's motion to supplement the record and Mr. Parra's request to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Harris L Hartz  
Circuit Judge