

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-7314

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RICHARD DAVID LASZCZYNSKI,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Chief District Judge. (CR-95-13, CA-96-185)

Submitted: June 18, 1998

Decided: July 2, 1998

Before MURNAGHAN and WILKINS, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Richard David Laszczynski, Appellant Pro Se. Michael D. Stein, OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

David D. Laszczynski, convicted on a guilty plea of escape, now appeals the district court's adoption of the magistrate judge's recommendation and denial of his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998), in which Laszczynski raised several claims relating to the waiver of his right to appeal, various sentencing claims, and ineffective assistance of counsel. On appeal Laszczynski raises only one claim. Specifically, Laszczynski alleges that, in dismissing his direct appeal, this court erroneously held that his waiver of his right to appeal was knowing, voluntary, and enforceable. He admits that while he did waive his appellate rights to challenge his sentence in the plea agreement he signed, he claims that at the Fed. R. Crim. P. 11 hearing, the district court led him to believe that he retained the right to appeal his sentence based upon the application of the sentencing guidelines to his case.

We have previously considered and determined that Laszczynski's plea was knowing and voluntary, and that his waiver was enforceable, and decline to reconsider this issue in this appeal. Accordingly, we deny a certificate of appealability and dismiss the appeal. Because this appeal presents no complex or substantial issue of law, we deny Laszczynski's motion for appointment of counsel. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

DISMISSED