

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-13855
Non-Argument Calendar

D.C. Docket Nos. 4:12-cv-00251-BAE-GRS; 4:10-cr-00159-BAE-GRS-4

HEZEKIAH MURDOCK,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(January 9, 2015)

Before TJOFLAT, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

Hezekiah Murdock, a federal prisoner proceeding *pro se*, appeals the denial of his motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C § 2255, alleging ineffective assistance of counsel. The district court denied the motion finding that the ineffective-assistance claim was barred by the collateral-attack waiver in Murdock's plea agreement.

On October 14, 2014, the United States Department of Justice issued a memorandum to all federal prosecutors regarding the enforcement of appeal waivers in which defendants waive claims of ineffective assistance of counsel on direct appeal and collateral attack. *See* Memorandum from James M. Cole, Deputy Attorney General, to All Federal Prosecutors (Oct. 14, 2014), *available at* http://pdfserver.amlaw.com/nlj/DOJ_Ineffective_Assistance_Counsel.pdf (“For cases in which a defendant's ineffective assistance claim would be barred by a previously executed waiver, prosecutors should decline to enforce the waiver when defense counsel rendered ineffective assistance resulting in prejudice or when the defendant's ineffective assistance claim raises a serious debatable issue that a court should resolve.”). In light of this new policy, and in response to our directive asking the United States Attorney to address its impact on this case, the government has withdrawn its reliance on Murdock's collateral-attack waiver.

As a result, the judgment of the district court is VACATED and the case is REMANDED to the district court with the instruction to afford Murdock an evidentiary hearing on his ineffective-assistance-of-counsel claim.