

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 99-3176

Steven Wayne Kurkowski,

Appellant,

v.

United States of America,

Appellee.

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Appeal from the United States
District Court for the
District of Minnesota.

[UNPUBLISHED]

Submitted: June 26, 2000

Filed: July 3, 2000

Before McMILLIAN, FAGG, and HANSEN, Circuit Judges.

PER CURIAM.

In the 28 U.S.C. § 2255 proceedings below, appellant and defense counsel filed conflicting sworn statements on whether appellant had instructed counsel to file a notice of appeal in his criminal case. The district court dismissed the § 2255 motion without a hearing because it did not believe appellant could raise any meritorious issues on appeal. An evidentiary hearing is required if the motion, files, and records are inconclusive regarding whether a movant has instructed counsel to file an appeal.

See Holloway v. United States, 960 F.2d 1348, 1357 (8th Cir. 1992). We do not require a showing of prejudice or the likelihood of success on appeal when the issue is whether counsel deprived the movant of his right to a direct appeal. See Hollis v. United States, 687 F.2d 257, 259 (8th Cir. 1982). Accordingly, we reverse the district court's decision and remand for an evidentiary hearing on whether appellant instructed counsel to file an appeal.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.