

December 16, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20271
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KRISTOPHER BROCK,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:02-CR-364-1

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Kristopher Brock appeals his conviction and sentence following a jury trial for possession with intent to distribute five grams or more of cocaine base. 21 U.S.C. § 841(a)(1), (b)(1)(B)(iii). He argues that 1) his trial counsel rendered ineffective assistance in failing to object at trial to testimony regarding his criminal history, 2) his trial counsel rendered ineffective assistance in failing to object at trial to the admissibility of a tape recording and to a witness's trial testimony regarding the contents of that tape recording, and

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

3) the cumulative effect of his trial counsel's errors deprived him of a fair trial.

"We have undertaken to resolve claims of inadequate representation on direct appeal only in rare cases where the record allowed us to evaluate fairly the merits of the claim." United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987); see Massaro v. United States, 538 U.S. 500, 504-05 (2003). This is not one of those rare cases. The judgment of the district court is AFFIRMED.