

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41022
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT DENNIS THOMPSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-94-1

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Robert Dennis Thompson appeals his conviction following a jury trial for possession with intent to distribute more than 100 kilograms of marijuana. 21 U.S.C. § 841(a)(1), (b)(1)(B). He argues that his trial counsel rendered ineffective assistance (1) by stipulating to the elements of the charged offense, (2) by not investigating and raising any pre-trial issues, and (3) by not investigating, raising, or filing a motion for new trial and/or a motion to arrest the judgment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

"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. Without prejudice to Thompson's right to file a motion pursuant to 28 U.S.C. § 2255, the judgment of the district court is AFFIRMED.