

July 30, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-51192
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH LEE STRAIT, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:06-CV-350
USDC No. 5:05-CR-185-ALL

Before JOLLY, DENNIS and PRADO, Circuit Judges.

PER CURIAM:*

Joseph Lee Strait, Jr., federal prisoner # 61036-180, moves this court for a certificate of appealability (COA) following the district court's denial of his 28 U.S.C. § 2255 motion wherein he challenged his conviction for possession with the intent to distribute cocaine base. Strait's motion to proceed in forma pauperis (IFP) is granted.

Strait argues that his trial counsel was ineffective for failing to properly object to the enhancement of his sentence as

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

both legally inapplicable under the Sentencing Guidelines and unconstitutional under United States v. Booker, 543 U.S. 220 (2005). Strait also argues that his trial counsel failed to file a notice of appeal on his behalf even though he specifically requested that counsel do so.

To obtain a COA, Strait must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 338 (2003). With respect to his claim that his counsel rendered ineffective assistance in connection with his objection to the sentence enhancement, Strait has failed to meet this standard. Accordingly, his motion for a COA is DENIED as to this claim. With respect to his claim that his counsel failed to file a requested notice of appeal, Strait has made the showing required for the issuance of a COA. See Roe v. Flores-Ortega, 528 U.S. 470, 477, 483 (2000). Accordingly, Strait's motion for a COA is GRANTED solely with respect to this issue. IFP GRANTED. The judgment is VACATED and the case REMANDED for further development in the district court.