

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1827  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BETTYE JEAN BRYANT,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. CA3-91-1168-D (3:89-CR-110-D)

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August 17, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

To prevail on an ineffective-assistance-of-counsel claim, a movant under 28 U.S.C. § 2255 must show "that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To prove deficient performance, the movant must show that counsel's actions "fell below an objective standard of reasonableness." Id. at 688. A strong presumption exists that an attorney's performance "falls within the wide range of reasonable

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

professional assistance." Id. at 689. There is also a presumption that the challenged action constitutes "sound trial strategy." See id. at 689 (citation omitted).

After investigating the facts, researching the issues, studying the record, and discussing the case with Bryant, trial counsel determined that Bryant's strongest defense was her alleged lack of knowledge and lack of participation in the drug-trafficking crime. He further determined to avoid raising the issue of why Bryant had a gun at the time of her arrest. By doing so, trial counsel wanted to avoid letting the Government try to introduce evidence of Bryant's past involvement in firearms. Trial counsel's decision not to call character witnesses was made intentionally to protect Bryant. In addition, trial counsel's conversations with Bryant affected his trial-strategy decisions. Trial counsel was also aware of the weakness in the "habit" defense: The jury could determine that Bryant had carried the gun for two reasons -- to protect herself and to facilitate the crime. Furthermore, trial counsel filed an unsuccessful motion to suppress all evidence of the seizure of the weapon.

Trial counsel did not act "outside the wide range of professionally competent assistance." Strickland, 466 U.S. at 690. Bryant's complaint amounts to a protest of her attorney's sound, but unsuccessful, trial strategy. Bryant, therefore, has failed to show that her trial counsel's performance was deficient. This Court need not reach the issue of prejudice.

AFFIRMED.