

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2705
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBINSON RAMIREZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-1190 (CR-H-89-0411-03)
- - - - -

June 24, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:¹

Robinson Ramirez appeals the district court's dismissal of his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. He contends that his trial was unfair, because he was deprived of the exculpatory testimony of Delores Erazo, a codefendant.² The district court did not err.

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

² On direct appeal Ramirez unsuccessfully argued that the district court erred by trying him before Erazo and that there was insufficient evidence to support his conviction. See United States v. Ramirez, 954 F.2d 1035, 1037-39, 1039 (5th Cir. 1992). These issue were not raised in Ramirez's § 2255 motion; nevertheless, Ramirez discusses them in his brief from the denial of the § 2255 motion. As these issues were addressed on direct

A § 2255 motion can be denied without a hearing "only if the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief." United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992). This Court reviews the district court's denial of a § 2255 motion for abuse of discretion. Id.

Ramirez argues that "Erazo's proffer, if believed, 1) rebuts the government's theory that Mr. Ramirez was a long-term participant in drug-trafficking, 2) contradicts the testimony of the government's informer, whose testimony was important to describing the government's version of what occurred at the pickup site, and 3) proves that Mr. Ramirez had no knowledge of the cocaine prior to his arrival at the pickup site."

Section 2255 sounds only in constitutional or jurisdictional errors. Hill v. United States, 368 U.S. 424, 428-29, 82 S.Ct. 468, 7 L.Ed.2d 417 (1962). The Sixth Amendment right to compulsory process did not guarantee that Ramirez could use Erazo's testimony. The district court could not have granted immunity to Erazo. United States v. Thevis, 665 F.2d 616, 639 (5th Cir.), cert. denied, 459 U.S. 825 (1982). The district court's refusal to grant immunity did not deprive Ramirez of the right to compulsory process. United States v. Heffington, 682 F.2d 1075, 1080-81 (5th Cir. 1982).

Ramirez's only other possible constitutional claim is that

appeal and were not raised in the § 2255 motion, they are not properly before this Court. See United States v. Santiago, ___ F.2d ___ (5th Cir. June 21, 1993, No. 92-5571) 1993 U.S. App. LEXIS 14750 *5.

the denial of Erazo's testimony deprived him of the fair trial guaranteed by the Fifth Amendment. As noted by the district court, Erazo can testify only regarding Ramirez's knowledge at the time he left her presence. This testimony is immaterial to Ramirez's knowledge of the cocaine at the transaction with the confidential informant, which was the crux of the Government's case. The motions, files, and records show that Ramirez is not entitled to relief. Bartholomew, 974 F.2d at 41. The district court did not abuse its discretion. Id.

AFFIRMED.