

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4687
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGER HALE,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Texas
(CA1-91-557) (CR1-89-102-3)

(January 28, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Roger Hale was named in 12 counts of a 50-count superseding indictment charging various violations of the Controlled Substance Act including conspiracy, distribution, and using a communications facility to facilitate the distribution of controlled substances. Pursuant to a plea agreement, Hale pleaded guilty to count 8 of the indictment for distribution of cocaine in violation of 21 U.S.C. §

*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

841(a)(1) and relinquished any claim he may have had to a 1988 Nissan, referred to in count 50 of the indictment. He was subsequently sentenced to 144 months imprisonment and 5 years supervised release.

Hale did not file a direct appeal. Instead, he filed a motion to reduce his sentence under Fed. R. Crim. P. 35, which the district court denied. He then filed this motion to vacate his sentence under 28 U.S.C. § 2255 asserting the government's violation of his plea agreement in the context of his sentence and ineffective assistance of counsel. The magistrate judge reported that Hale's sentence was clearly spelled out in the plea agreement and that Hale had effective counsel. He recommended that Hale's motion to vacate his sentence be denied. This recommendation was adopted by the district court.

I

Hale first argues that his plea was not knowing and voluntary because he relied in making his plea on the government's assurance that they would drop count 1 of the indictment and he would only be held accountable for count 8.

Hale seems to be arguing that the sentencing court used information in count 1 as relevant conduct under the sentencing guidelines. However, such nonconstitutional claims not raised on direct appeal, may not be asserted in a collateral proceeding. U.S. v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). The district court's technical application of the guidelines is not an issue of

constitutional dimension and is therefore not cognizable under the relief available under § 2255. Id. Further, the district court abided by the plea agreement and dismissed count 1 and all other remaining counts of the indictment pertaining to Hale.

To the extent that Hale is simply arguing that his guilty plea was unknowing and involuntary, that issue is also without merit. A federal habeas court will uphold a guilty plea if it was knowing, voluntary, and intelligent. Hobbs v. Blackburn, 752 F.2d 1079, 1081 (5th Cir.), cert. denied, 474 U.S. 838 (1985). A guilty plea is invalid if the defendant does not understand the nature of the constitutional protections that he is waiving or he has such an incomplete understanding of the charges against him that his plea cannot stand as an intelligent admission of guilt. Henderson v. Morgan, 426 U.S. 637, 645 n.13, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976).

Before accepting his guilty plea, the trial judge informed Hale of the maximum possible punishment he faced and that the plea agreement limited his sentence to 144 months. Hale stated that he understood the nature of the charges against him, the possible punishment, and the rights he was losing by pleading guilty. He also testified that he had not been given any inducement for pleading guilty or been coerced or threatened to do so. As the above facts reveal, Hale knew that his sentence could be the maximum 144 months he agreed to in his plea agreement when he plead guilty. Therefore, the government did not mislead Hale, and his

plea was knowing and voluntary. See U.S. v. Kinder, 946 F.2d 362, 367 (5th Cir.), cert. denied, ___U.S.___, 112 S. Ct. 1677, and, cert. denied, ___U.S.___, 112 S.Ct. 2290 (1992).

II

Hale contends that the district court used a larger amount of cocaine than was appropriate to calculate his sentence. Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for injuries that could not have been raised on direct appeal, and would if allowed result in a total miscarriage of justice. Nonconstitutional claims not raised on direct appeal may not be asserted in a collateral proceeding. Vaughn, 955 F.2d at 368.

Hale was sentenced well below the guidelines range of 188 to 235 months imprisonment and did not directly appeal his sentence. The district court's technical application of the guidelines is not an issue of constitutional dimension and is therefore not cognizable under the limited scope of relief available under § 2255. Vaughn, 955 F.2d at 368.

III

Finally, Hale argues that the district court erred in denying him transcripts free of cost, appointment of counsel, and an evidentiary hearing regarding his 28 U.S.C. § 2255 motion to vacate his sentence. He appears, however, to abandon his issue regarding appointment of counsel in his reply brief, stating that it was only a request and that he will not argue it, as it is a lost case.

Therefore, that particular element of Hale's final issue will not be addressed, but we will address his other two contentions.

Title 28 U.S.C. § 2255 requires that the district court grant an evidentiary hearing on a petitioner's claim unless the motion, files, and record conclusively show that the prisoner is not entitled to relief. As shown above, the record reveals that Hale's plea was voluntary. Hale does not present any other cognizable constitutional issues. A hearing is not required on claims based on unsupported generalizations. U.S. v. Fishel, 747 F.2d 271, 273 (5th Cir. 1984). Therefore, the district court's decision not to hold an evidentiary hearing regarding Hale's § 2255 motion to vacate his sentence was proper.

Hale also appeals the district court's denial of his motion for transcripts to better prepare either his § 2255 motion or his appeal. Even assuming the district court's denial of Hale's motion for transcripts at government expense was incorrect, the transcripts he requested were available through this court. This Court's Clerk's Office has confirmed by telephone that Hale did not make a request to this court for his transcripts. Therefore, the question of whether the district court erred in denying Hale's motion is moot.

IV

For the reasons we have set out herein, the judgment of the district court is

A F F I R M E D.