

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7434
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DLOYS GIVHAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA WC 91 119 S(CR 90 34 S))

July 14, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Appellant was convicted of various drug and weapons offenses and his conviction was affirmed by this court. He next sought habeas relief which the district court denied. He appeals. We affirm.

Insufficiency of evidence and ineffectiveness of counsel are the grounds alleged for relief. We assume that Appellant is not procedurally barred from raising these issues even though he has shown neither cause nor prejudice to excuse his failure to raise

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

them on direct appeal because the government did not raise procedural bar in the district court. United States v. Shaïd, 937 F.2d 228 (5th Cir. 1991), cert. denied, 112 S. Ct. 978 (1992). We note, however, that the government was never called on to respond in the district court. We do not address the procedural issue because Appellant's arguments lack merit.

We have carefully reviewed the evidence, which we will not recount here, and find it more than sufficient. The government proved the elements of conspiracy and possession.

Having found the evidence sufficient, Appellant's argument that counsel was ineffective for failure to challenge its insufficiency necessarily fails. Even more to the point, counsel did challenge the sufficiency of the evidence. He objected to the admissibility of government evidence, moved for acquittal largely on the basis that evidence of conspiracy was inadequate, and filed a similar post trial motion.

Appellant also complains that counsel should have checked the witness Patterson's background but fails to indicate how this would have affected the outcome of this case.

Appellant's arguments are all without merit.

AFFIRMED.