

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7516
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MORRIS GUINN TURMAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-M-92-034 (CR-M-88-417)

- - - - -
March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Morris Guinn Turman appeals the district court's denial of his motion under 28 U.S.C. § 2255 to vacate his sentence. Turman also moves for appointment of counsel.

Turman argues that (1) there was insufficient evidence to support a conviction for conspiracy and (2) the indictment was faulty because it failed to specifically name the other coconspirators.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

A claim attacking an indictment is cognizable in a § 2255 proceeding only where an indictment is so deficient that it deprives a convicting court of jurisdiction. United States v. Armstrong, 951 F.2d 626, 628-29 (5th Cir. 1992). The language in the indictment need only "inform the accused of the specific offense with which he is charged." Id.

Turman's faulty-indictment issue was raised for the first time in his § 2255 motion and Turman never objected at trial on grounds that the evidence did not conform to the indictment. Accordingly, this Court will construe the indictment "liberally in favor of the [G]overnment." See United States v. Prince, 868 F.2d 1379, 1383-84 (5th Cir.), cert. denied, 493 U.S. 932 (1989). The indictment charging Turman adequately informed him of the offense with which he was charged.

Nor will this Court reconsider issues raised and determined on direct appeal in a § 2255 proceeding. United States v. Kalish, 780 F.2d 506, 508 (5th Cir.), cert. denied, 476 U.S. 1118 (1986). The district court correctly held that Turman's insufficiency-of-evidence argument was not cognizable in a § 2255 proceeding because it was disposed of on direct appeal.

The district court's denial of Turman's motion to vacate his sentence under § 2255 is AFFIRMED. In light of this disposition, Turman's motion for appointment of counsel is DENIED.