

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8658  
Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CYNTHIA GAIL GREER,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Western District of Texas  
(W 90 CR 34)

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(August 6, 1993)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.\*

PER CURIAM:

Petitioner-appellant Cynthia Gail Greer (Greer) pleaded guilty to being, on or about September 9, 1988, a felon in possession of a firearm, 18 U.S.C. § 922(g)(1), and on July 15, 1990, she was sentenced under 18 U.S.C. § 924(a) to twenty-one months' imprisonment, three years' supervised release, a \$2,000 fine, and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a \$50 special assessment. There was no direct appeal. Proceeding *pro se* and *in forma pauperis*, on June 2, 1992, Greer moved under 28 U.S.C. § 2255 for her sentence to be vacated, set aside, or corrected, alleging three grounds: (1) ineffective assistance of counsel for telling her that her state and federal sentences would be concurrent and for failing to advise her that she could not have been convicted for being a Texas nonviolent felon in possession of a firearm, (2) insufficient evidence to support her conviction in light of Texas law prohibiting only violent felons from possessing weapons, and (3) the illegality of imposing supervised release under 18 U.S.C. § 924(a).

After receiving the government's response, the district court on October 13, 1992, partially granted Greer's motion. It concluded, relying on *United States v. Allison*, 953 F.2d 870, 875 (5th Cir.), *cert. denied*, 112 S.Ct. 2319 (1992), *opinion corrected on reh'g*, 986 F.2d 896 (5th Cir. 1993), that supervised release could not be imposed under section 924(a). It denied the motion on the other two grounds, concluding that the Texas prohibition on only violent felons possessing firearms was irrelevant to a violation under federal law and that Greer's allegations of ineffective assistance of counsel were conclusional.

The government successfully moved for reconsideration on the issue of supervised release, pointing out pre-*Allison* Fifth Circuit law as controlling law. The district court on October 22, 1992, amended its judgment and reinstated Greer's three-year term of supervised release. Prior to the entry of this judgment, Greer, on

October 21, 1992, mailed to the district court a reply to the government response to her original motion, arguing her three grounds for relief and attaching a purported affidavit by Ruth Sandifer (Sandifer). This reply was filed October 26, 1992. Greer filed no motion for reconsideration or new trial, but did timely appeal the October 22, 1992, judgment. We affirm.

Although couched in terms of insufficient facts to support her guilty plea, Greer's argument is in substance a legal challenge on whether any of her Texas felonies constitute the requisite conviction "of a crime punishable by imprisonment for a term exceeding one year" under 18 U.S.C. §§ 921(a)(20) and 922 (g)(1). She argues that under Texas law she is not prohibited from possessing a firearm and that, in light of Texas law, her civil rights have been restored to her under 18 U.S.C. § 921(a)(20); thus, her actions did not violate 18 U.S.C. § 922(g)(1).

Greer's argument is foreclosed by *United States v. Thomas*, 991 F.2d 206, 213-15 (5th Cir. 1993). "Any conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction for purposes of [§ 922(g)(1)] . . . ." Section 921(a)(20). Although Texas law does not proscribe a nonviolent felon's possession of a firearm, this Court holds that "Texas neither actively nor passively restores the civil rights of persons convicted of such felonies merely by permitting them to possess firearms or by not declaring their possession of firearms to be unlawful." *Thomas*, 991 F.2d at 215.

Greer argues two instances of ineffective assistance of

counsel that made her plea of guilty unknowing and involuntary. To show a constitutional violation, Greer "must demonstrate not only that h[er] counsel's performance was deficient, but also that the deficient performance prejudiced the defense." *United States v. Smith*, 915 F.2d 959, 963 (5th Cir. 1990). To prove deficiency, Greer "must show that counsel's representation fell below an objective standard of reasonableness." *Strickland v. Washington*, 104 S.Ct. 2052 (1984). To prove prejudice, Greer "must show that there is a reasonable probability that, but for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 106 S.Ct. (1985).

Greer alleges that counsel failed to inform her that, because Texas law does not prohibit her possession of a firearm, she could not be found guilty on the federal charge of being a section 921(a)(20) felon in possession of a firearm. In light of the *Thomas* holding that rejects Greer's interpretation of liability under 18 U.S.C. § 922(g)(1), "counsel was not unconstitutionally ineffective in failing to inform h[er] about" section 921(a)(20). *Smith*, 915 F.2d at 963.

Greer also alleges that counsel<sup>1</sup> was constitutionally ineffective for misrepresenting to her that her state and federal sentences would run concurrently. She argues that this misrepresentation or promise induced her guilty plea and that the

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<sup>1</sup> According to the facts alleged by Greer, she had separate counsel for the state charge [Hoagie Karel] and the federal charge [Walter Reaves, Jr.]. Greer alleges, however, that both attorneys told her that the sentences would be concurrent.

affidavit submitted by Sandifer overcomes the presumptive barrier of Greer's contrary sworn statements at her arraignment, where Greer stated under oath, among other things, that no one had made a promise or prediction on what her sentence would be.

"To receive federal habeas corpus relief based on alleged promises that are inconsistent with representations made in open court when h[er] guilty plea was accepted, [Greer] must 'prove (1) exactly what the terms of the alleged promise were; (2) exactly when, where, and by whom such a promise was made; and (3) the precise identity of an eyewitness to the promise.'" *Smith*, 915 F.2d at 963 (internal quotations and citations omitted).

Even assuming that Sandifer's submitted statement was timely filed below and amounts to "independent indicia of the likely merit of [Greer]'s contentions," the statement nevertheless fails to provide the necessary details required to overcome Greer's sworn representations. *United States v. Raetzsch*, 781 F.2d 1149, 1151 (5th Cir. 1986).<sup>2</sup> *Compare Davis v. Butler*, 825 F.2d 892, 894 (5th Cir. 1987) (assertion giving date, eyewitnesses, and specifics of the promise inducing the guilty plea). Solemn declarations in open court carry a strong presumption of verity. The subsequent

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<sup>2</sup> The undated statement, which says nothing whatever about Sandifer's relation to Greer, any of the attorneys in question, or any of the charges or proceedings, merely recites in conclusional form that at some unspecified time (or times) and place (or places), Sandifer "did contact; by telephone, attorneys Hoagie Karel and Walter Reaves, Jr. [see note 1, *supra*] in relation to Cynthia Greer. I was informed by both that Ms. Greer's sentences were to run concurrently; and that is the reason her cases were done as they were." The statement is not witnessed and does not have any form of jurat (although it recites that affiant knows "if I should provide false information herein it would subject me to penalties of perjury"). Among other things, Sandifer's statement does not purport to reflect any firsthand knowledge of what either Karel or Reaves told Greer prior to her federal plea, nor to recite any statement by Karel or Reaves as to what they told Greer before her federal plea.

presentation of conclusory allegations unsupported by specifics is subject to summary dismissal . . . ." *Blackledge v. Allison*, 97 S.Ct. 1621 (1977).

In light of Greer's sworn assertions at arraignment, Greer "has not established that a reasonable probability exists that but for h[er] counsel's alleged misrepresentations [s]he would not have pleaded guilty." *Smith*, 915 F.2d at 964.

Greer finally argues that because section 924(a) does not provide for supervised release as a penalty, the sentencing court could not impose supervised release. She relies upon *Allison*, 953 F.2d at 875, for this proposition.

On rehearing, however, the *Allison* Court revised its prior holding and held, utilizing 18 U.S.C. § 3583, that "supervised release is available for convictions under 18 U.S.C. § 924." *Allison*, 986 F.2d 896, 897 (5th Cir. 1993), *correcting* 953 F.2d 870 (5th Cir. 1992); *see also United States v. Van Nymegen*, 910 F.2d 164, 165-67 (5th Cir. 1990) (holding that supervised release is permissible pursuant to 18 U.S.C. § 3583). Therefore, the district court did not impose impermissibly upon Greer a three-year term of supervised release. *See* 18 U.S.C. §§ 3559(a)(1)(D), 3583 (a) & (b)(2); 18 U.S.C. § 924(a) (as codified in 1988, the year of Greer's offense).

Greer has shown no reversible error in the district court's denial of her section 2255 petition. The district court's amended judgment of October 22, 1992, is accordingly

AFFIRMED.