

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1352
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROBERTO MEDRANO,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(CA3-91-2591(3:87-CR-139-D))

(May 12, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Roberto Medrano, *pro se*, appeals the denial of his 28 U.S.C. § 2255 claims. We **AFFIRM**.

I.

Roberto Medrano and a number of other defendants were indicted for conspiring to distribute more than one kilogram of cocaine. Medrano executed a written plea agreement in which he agreed to plead guilty to a one-count superseding information, charging him with violating 21 U.S.C. § 841(a)(1), by possessing approximately

¹ Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

two kilograms of cocaine with intent to distribute. In exchange, the Government agreed to dismiss all previously filed indictments at sentencing and to a sentencing cap of 25 years in prison. The agreement recited that Medrano would not be eligible for parole during any period of incarceration, and stated that the Government had made no promises as to any specific sentence.

The factual statement that was executed along with the plea agreement stated that from November 1986 through May 20, 1987, Medrano was a member of a conspiracy to distribute cocaine in the Northern District of Texas and elsewhere. As part of this conspiracy, a codefendant travelled from Miami, Florida, to Dallas, Texas, on April 27, 1987, to deliver two kilograms of cocaine to Medrano. The statement also set out the elements of the offense -- that the defendant possessed with the intent to distribute a controlled substance and did so knowingly and intentionally.

Following a hearing, the district court accepted Medrano's guilty plea to the information. The court subsequently sentenced Medrano, under pre-Guidelines law, to 25 years in prison without parole and a fine of \$50,000.²

Medrano commenced this action under 28 U.S.C. § 2255, claiming that his sentence should be set aside on various grounds. The Government moved to dismiss, or in the alternative for summary judgment, maintaining that the transcript refuted Medrano's claims

² Medrano did not file a direct appeal, but rather moved for reduction of sentence and for correction of an illegal sentence, pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The district court denied both motions.

concerning the alleged deficiencies at the plea hearing and that his other claims lacked merit. The magistrate judge found that Medrano's claims were not supported by the record and recommended that the requested relief be denied. Medrano objected to the report and recommendation, asserting for the first time that he did not understand the district court's statements at the plea hearing because he speaks Spanish and there was no interpreter present. The district court adopted the magistrate judge's report and recommendation over Medrano's objections and entered judgment accordingly.

II.

A.

Medrano contends first that his guilty plea was involuntary on the basis that he did not understand the plea proceedings because they were conducted in English and his primary language is Spanish. The record reflects, however, that Medrano never requested an interpreter or indicated that he had any difficulty comprehending the English language. In fact, at the plea hearing, Medrano stated that he could read and write and that he read and understood the information, waiver of indictment form, plea agreement, and factual resume. He also indicated that he attended school and completed the eighth grade. His attorney stated that he was satisfied that Medrano understood the documents that he signed. The transcript reveals that Medrano, on numerous occasions during the plea hearing, responded affirmatively to the court's questions concerning his ability to understand the proceeding. At the

conclusion of the hearing, the court asked Medrano if he understood "everything that went on in this proceeding this afternoon?"; and Medrano responded, "Yes, sir."

In view of Medrano's repeated statements at the plea hearing that he understood the proceedings, the district court did not err by failing to obtain an interpreter or inquiring into Medrano's ability to speak and understand English. *See, e.g., United States v. Paz*, 981 F.2d 199, 201 (5th Cir. 1992); *United States v. Perez*, 918 F.2d 488, 490 (5th Cir. 1990). Moreover, Medrano's statements made under oath at the plea hearing regarding his ability to understand the proceedings carry a "strong presumption of verity," which his conclusory allegations are insufficient to overcome.³ *United States v. Stumpf*, 827 F.2d 1027, 1030 (5th Cir. 1987).

B.

Medrano asserts next that the district court violated Rule 11 and rendered his guilty plea involuntary by failing to provide him with required information. The record indicates, however, that the district court complied with Rule 11's requirements concerning Medrano's sentencing exposure.⁴ The court made certain that

³ Liberally construing Medrano's brief, he also appears to contend that his guilty plea was involuntary because the district court did not explain the elements of the charge to which he pleaded guilty. The record, however, conclusively refutes this contention. The prosecutor adequately stated the elements of the offense, and the court thereafter questioned Medrano to make certain that he understood the nature of the charge. Medrano stated that he did.

⁴ Rule 11(c)(1) provides that the court must, before accepting a guilty plea, inform the defendant of, among other things, "the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible

Medrano understood the nature of the offense to which he was pleading, informed him of the five-year mandatory minimum sentence without the possibility of parole, and accurately stated that the maximum possible penalty for the offense was 40 years in prison without parole and a \$2 million fine. The court also explained that the plea agreement provided for a maximum possible penalty of 25 years without parole.

Medrano specifically asserts that the court violated Rule 11 in failing to advise him that it could consider conduct concerning dismissed counts in determining his sentence. The district court could properly consider "past crimes, including those for which the defendant has been indicted but not convicted ... as well as the factual basis of the dismissed counts." *United States v. Johnson*, 823 F.2d 840, 842 (5th Cir. 1987). This court has held further, however, that a defendant may not bar consideration of conduct relevant to the court to which he pleads by bargaining for dismissal of other counts." *United States v. Smallwood*, 920 F.2d 1231, 1239 (5th Cir. 1991).⁵ Therefore, this claim is without merit.

penalty provided by law...."

⁵ Although unrelated to the voluntariness of the plea, Medrano contends that the district court's imposition of a 25 year sentence and a \$50,000 fine violates the Eighth Amendment. Because he did not raise this issue in district court, it may not be considered on appeal. *See United States v. Smith*, 915 F.2d 959, 964 (5th Cir. 1990).

C.

Medrano maintains next that the district court had no jurisdiction to sentence him under 21 U.S.C. § 841 without a showing of some connection between the offense and interstate commerce. Section 841, however, does not require proof of such a nexus, and Congress did not exceed its authority under the commerce clause by enacting the statute without requiring such proof. **See United States v. Owens**, 996 F.2d 59, 61 (5th Cir. 1993). Therefore, this argument is without merit.

D.

Medrano's final contention is that counsel provided ineffective assistance. To establish this claim, he must show that counsel's performance was deficient and that the deficient performance prejudiced his defense. **Strickland v. Washington**, 466 U.S. 668 (1984). Medrano makes only conclusory allegations concerning counsel's alleged failure to research the law and to make proper objections to the presentence report. He does not indicate what particular research counsel should have performed, what specific objections counsel should have made, or how he was prejudiced by any of these alleged errors. Thus, this claim must fail.⁶

⁶ Medrano does assert that counsel failed to advise him of his right to appeal. But, he did not assert this claim in the district court; and this court need not address it. **Smith**, 915 F.2d at 964. Instead, Medrano claimed that counsel failed to file a notice of appeal when requested to do so. Medrano has abandoned even this issue, however, by failing to present it in his brief. **Yohey v. Collins**, 985 F.2d 222, 224-25 (5th Cir. 1993).

III.

For the foregoing reasons, the judgment is

AFFIRMED.