UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-2235

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RAFIK SOLIMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(H-92-CV-1640 (H-90-CR-270-ALL)

(May 12, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Rafik Soliman appeals the district court's denial of his motion to vacate his conviction and sentence under 28 U.S.C. § 2255 (1988). We affirm.

Soliman ordered and received a videotape of children engaging in sexual conduct, from a sham company created by the United States Customs Service as part of a reverse sting operation. Soliman pleaded guilty to knowingly receiving the videotape, in violation

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of 18 U.S.C. § 2252 (1988), and the district court sentenced him to 12 months imprisonment. We affirmed on direct appeal. *See United States v. Soliman,* 954 F.2d 1012 (5th Cir. 1992).

Soliman then filed an "Application for Writ of Habeas Corpus and Writ of Coram Nobis," under 28 U.S.C. §§ 1651, 2255. Soliman alleged that his conviction was invalid, because the government's reverse sting operation amounted to entrapment. The district court held that Soliman was barred from raising the issue of entrapment, because he had neither raised the issue before initiating the proceeding under § 2255, nor shown cause for failing to do so.[1] In deciding that Soliman had not shown cause, the district court rejected his argument that *Jacobson v. United States,* ___ U.S. ___, 112 S. Ct. 1535 (1992), which was decided after we affirmed on direct appeal, changed the law of entrapment.[2] Because Soliman's argument was barred by procedural default, the district court denied relief under § 2255.

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[1] It is undisputed that Soliman failed to raise the issue of entrapment prior to filing his motion under § 2255. "The Supreme Court has emphasized repeatedly that a `collateral challenge may not do service for an appeal.'" *United States v. Shaid,* 937 F.2d 228, 231 (5th Cir. 1991) (en banc) (quoting *United States v. Frady,* 456 U.S. 152, 165, 102 S. Ct. 1584, 1593, 71 L. Ed. 2d 816 (1982)), *cert. denied,* ___ U.S. ___, 112 S. Ct. 978, 117 L. Ed. 2d 141 (1992). A defendant "may not raise an issue for the first time on collateral review without showing both `cause' for his procedural default, and `actual prejudice' resulting from the error." *Id.* at 232 (quoting *Frady,* 456 U.S. at 168, 102 S. Ct. at 1594).

[2] *See id.* at 231 n.5 (stating that a change in the law amounts to cause "if the change is so novel that its legal basis was not reasonably available or foreseeable at the time of trial").

Soliman's only challenge to the district court's holding is his argument that "*Jacobson* was a major change in entrapment law." Soliman contends that Justice O'Connor correctly stated, in her dissenting opinion in *Jacobson,* that the majority's "holding changes entrapment doctrine." *Jacobson,* at ___, 112 S. Ct. at 1545 (O'Connor, J., dissenting). Soliman's argument is meritless, because the majority explicitly rejected Justice O'Connor's characterization of its holding. *See id.* at ___ n.2, 112 S. Ct. at 1540-41 n.2 ("The dissent is mistaken in claiming that this is an innovation in entrapment law . . . ."). Therefore the district court correctly held that *Jacobson* does not represent a change in the law amounting to cause for Soliman's procedural default, and Soliman has not demonstrated that the district court erred by holding that his entrapment claim was barred.

Soliman also attacked his sentence, alleging that he was entitled to a downward departure under § 5K2.12 of the federal sentencing guidelines, on account of his incomplete defense of entrapment.[3] The district court refused to vacate Soliman's sentence, because his attack on the computation of his sentence under the guidelines was not cognizable under § 2255. The district court reasoned that "§ 2255 motions are `reserved for the transgression of constitutional rights and for that narrow compass of other injury that could not have been raised on direct appeal

[3] *See* United States Sentencing Commission, *Guidelines Manual,* § 5K2.12 (1993) ("If the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense, the court may decrease the sentence below the applicable guideline range.").

and would, if condoned, result in a complete miscarriage of justice.'" Although Soliman asserts on appeal that he is entitled to a downward departure based on the incomplete defense of entrapment, he fails to challenge the district court's holding that that issue is not cognizable under § 2255. The issue is therefore waived. *See Friou v. Phillips Petr. Co.,* 948 F.2d 972, 975 (5th Cir. 1991) ("A party who inadequately briefs an issue is considered to have abandoned the claim.").

For the foregoing reasons, we **AFFIRM**.