

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2290
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TAMI LORRAINE JONES,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-92-3604 (CR-H-89-0269-01))

(May 25, 1994)

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

PER CURIAM:*

I

In August 1989, Tami Jones was charged with conspiracy to manufacture more than 100 grams of methamphetamine (count 1), in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846, and aiding and abetting the attempt to manufacture more than 100 grams of methamphetamine (count 2), in violation of 21 U.S.C.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

§§ 841(a)(1), 841(b)(1)(A), and 846, and 18 U.S.C. § 2. On April 26, 1991, after a five-day trial, the jury deadlocked and the district court declared a mistrial. Shortly thereafter that same day, the government and Jones entered into an oral plea agreement, whereby Jones agreed to plead guilty to count 1 in exchange for the government's dismissal of count 2, recommendation of a sentence at the lower end of the guideline sentence, and agreement to file a U.S.S.G. § 5K1.1, p.s., motion in the event of substantial assistance. Jones was then rearraigned and entered a guilty plea.

At the sentencing hearing, the district court departed downward from the guideline sentence upon the government's § 5K1.1 motion and imposed a six-year sentence. No direct appeal was filed.

On November 19, 1992, Jones filed a § 2255 motion asserting that her guilty plea was coerced by her trial attorney with the "acquiescence and knowledge of the government's attorney" and that she was not informed about the effect of the guidelines on her sentence if she were convicted at the second trial. The government answered, pleading procedural bar. The district court denied § 2255 relief without an evidentiary hearing pursuant to a judgment entered on March 9, 1993, because (1) Jones's claims were procedurally barred and (2) neither Jones's allegations nor the record of the arraignment proceedings provided a basis for a claim of coercion: Jones stated under oath that she had not been

forced to plead guilty and that her counsel had advised her of the effect of the sentencing guidelines.

II

Jones argues that the fifteen-minute limit imposed by the government on the plea agreement it proposed was "impermissible coercion," which rendered Jones's acceptance involuntary. Relief under § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice. U.S. v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). Nonconstitutional claims that could have been raised on direct appeal, but were not, may not be asserted in a collateral proceeding. Id. Even if a defendant alleges a fundamental constitutional error, he 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. U.S. v. Shaid, 937 F.2d 228, 232 (5th Cir. 1991) (en banc), cert. denied, 112 S.Ct. 978 (1992). The only exception to the cause-and-prejudice test is the "extraordinary case . . . in which a constitutional violation has probably resulted in the conviction of one who is actually innocent." Id. at 232 (internal quotations and citation omitted). To invoke the procedural bar, however, the government must raise it in the district court. U.S. v. Drobny, 955 F.2d 990, 995 (5th Cir. 1992).

Because the government pleaded the procedural bar in its answer, and Jones failed to articulate cause for her failure to pursue a direct appeal of her conviction and demonstrate how she was prejudiced, her argument that her guilty plea was coerced by the time constraints imposed by the government is not cognizable in a § 2255 proceeding. Shaid, 937 F.2d at 232. Nor does Jones suggest any reason why denial of § 2255 relief may result in a complete miscarriage of justice. U.S. v. Perez, 952 F.2d 908, 909 (5th Cir. 1992). Moreover, as the district court recognized, Jones presented no authority for her substantive contention that the government's imposition of time constraints coerced her into accepting the offer. Accordingly, the district court did not err in denying § 2255 relief.

III

Jones also contends that the district court erred in refusing to hold an evidentiary hearing because her allegations of coercion arose from conversations with her trial attorney that took place in the courtroom hallway after the judge declared the mistrial and because the court under Bell v. Alabama, 367 F.2d 243 (5th Cir. 1966), cert. denied, 386 U.S. 916 (1967), "must necessarily take each of the appellant's claims as true" if it dismisses her motion without a hearing. As part of her argument, Jones makes a veiled attack on the sufficiency of her counsel's assistance when she argues that her lawyer (1) improperly advised her of the maximum guideline sentence (life imprisonment) rather than speculating

about the possible sentence that she might receive, (2) failed to advise her regarding the effect of the guidelines if she were convicted at the second trial, and (3) told her to answer "yes" to all of the district court's questions during the arraignment hearing. Because Jones's failed to include in her brief any discussion or appellate argument raising an ineffective-assistance-of-counsel claim, that issue is deemed abandoned, and we decline to address it. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); Fed. R. App. P. 28(a). A § 2255 motion can be denied without a hearing "only if the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief." U.S. v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992). This court reviews a district court's denial of an evidentiary hearing for abuse of discretion. Id. A hearing is unnecessary if the allegations are inconsistent with the movant's behavior and the movant does not offer detailed and specific facts to support her allegations. U.S. v. Smith, 915 F.2d 959, 964 (5th Cir. 1990). Jones's unsubstantiated, conclusional allegations respecting the hallway conversation do not show that she was threatened or coerced. Moreover, the record shows that Jones was questioned by the district court at length during the plea colloquy on the circumstances of the plea and Jones responded under oath that (1) her plea was voluntary, (2) no promises had been made to her to induce her to plead guilty, and (3) she understood that she could receive life imprisonment if convicted. The district court did not

abuse its discretion in declining to hold an evidentiary hearing. See U.S. v. Stumpf, 827 F.2d 1027, 1030 (5th Cir. 1987) (statements made to the court when a guilty plea is entered "carry a strong presumption of verity and the subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal") (internal punctuation and citation omitted).

IV

For the reasons stated herein, the judgment of the district court is

A F F I R M E D.