

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3113  
(Summary Calendar)

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WARREN MURPHY, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA 92 965 (CR 89 0007 L))

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August 4, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:\*

Federal prisoner Warren Murphy, Jr., appeals from the district court's denial of his motion for post-conviction relief from the sentence imposed as a result of his 1989 kidnapping, assault, and attempted murder convictions. Finding no error, we affirm.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Murphy's convictions stem from a kidnapping and shooting incident that occurred in December 1988. Murphy was a postal worker in New Orleans. He was involved in a romantic affair with a co-worker named Carol Smith. During the second half of 1988, Murphy complained to Smith that the supervisors at the New Orleans post office did not care about the mail or about people. He also voiced suspicions that supervisors Calvin Ricks, Leonard King, John Simms, and Charlie Smith wanted to have sex with her. Murphy told Ms. Smith that someday he would enter the post office with a shotgun and kill Ricks, Simms, King, and Charlie Smith while she watched. He repeated this threat several times.

Carol Smith broke off her relationship with Murphy in late November. On December 12th, Murphy repeatedly called Smith's home, leaving a series of messages on her answering machine. In those messages, a clearly agitated Murphy asked Smith to pick up the phone and talk with him. Using rather coarse language, Murphy told Smith that he knew she was not being faithful. Murphy called again on December 13th.

On December 14th, Murphy arrived at the post office at around 7:00 p.m. He walked into the employees' entrance and eventually walked to the second floor area where Carol Smith worked. He had a twelve-gauge shotgun hidden in his pants and under his work apron.

Murphy walked up to Smith and asked her if she was ready to talk to him. Meanwhile, another postal worker called Smith's

supervisor, John Simms. Simms asked Murphy to leave. Murphy departed to the men's room, only to return brandishing the shotgun. Murphy told Smith that he would shoot her if she ran. He then held the gun on Leonard King and ultimately shot him in the face. The shot also wounded two other postal workers.

Murphy then took Smith to the first floor supervisor's office, where he attempted to barricade the door. At about 1:00 a.m. on the 15th, two FBI SWAT team members, who were trying to locate postal workers to evacuate them from the building, found Murphy in the supervisor's office. One agent partially opened the door to the office, identified himself as an FBI agent, and asked Murphy to release Smith and come out. Murphy responded by shooting at the agent, hitting him in the forehead and in the hand. Another FBI agent also was wounded by one of the many rounds Murphy continued to fire from his shotgun.

Murphy ultimately surrendered. After his arrest, Murphy was advised of his rights and made a recorded statement in which he described family problems and his frustration with the post office supervisors. He also denied that he had intended to harm anyone when he entered the post office on December 14th.

In March 1989, Murphy was found by a jury to be guilty of kidnapping, three counts of assault with intent to murder, one count of assault with intent to murder an FBI agent, and one count of assault with intent to inflict great bodily harm. His convictions were affirmed by this court on direct appeal in an unpublished opinion, United States v. Murphy, No. 89-3392 (5th

Cir., January 4, 1990). Murphy is now in custody at the Federal Correctional Institute, Three Rivers, Texas, where he is serving a two-hundred month sentence.

On March 18, 1992, Murphy filed a motion for post-conviction relief pursuant to 28 U.S.C. § 2255. In his motion, Murphy asserted (1) that he was denied the effective assistance of counsel during his trial, (2) that the trial court improperly prevented him from testifying on his own behalf, and (3) that he was not advised of his rights prior to making his statements to the authorities. In response, the Government filed a motion for denial of relief, supported by an affidavit sworn by Murphy's trial counsel. By an order entered January 22, 1993, the district court denied Murphy's motion without a hearing. Murphy timely appealed.

## II.

Proceeding on appeal pro se, Murphy challenges only the district court's rejection of his ineffective assistance of counsel claim. After a careful review of the record, we conclude that the district court properly denied relief.

To succeed on an ineffective assistance of counsel claim, a defendant must show (1) that his attorney's performance was deficient in that it fell below an objective standard of reasonableness and (2) that the attorney's deficient performance actually prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 688-94 (1984); Lincecum v. Collins, 958 F.2d 1271, 1278 (5th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 417 (1992).

Because the range of attorney conduct that may be considered reasonable is extremely wide and dependent upon the necessities of a given case, our review of the attorney's performance is highly deferential. Strickland, 466 U.S. at 688-89; Lincecum, 958 F.2d at 1278. The defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. Strickland, 466 U.S. at 689.

If professionally unreasonable errors are established, the defendant must establish prejudice by showing that there is a reasonable probability that, but for the attorney's professional errors, the result of the proceeding would have been different. Id. at 694. That is, he must show that his attorney's performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. Lockhart v. Fretwell, \_\_\_ U.S. \_\_\_, 113 S.Ct. 838, 844 (1993). Of course, "[i]f the facts adduced at trial point so overwhelmingly to the defendant's guilt that even the most competent attorney would be unlikely to have obtained an acquittal, then the defendant's ineffective assistance claim must fail." Green v. Lynaugh, 868 F.2d 176, 177 (5th Cir.), cert. denied, 493 U.S. 831 (1989).

Here, Murphy asserts that his attorney's performance was deficient because he presented "no defense" and refused to let Murphy testify in his own behalf. With respect to the attorney's failure to put on a defense, Murphy offers no specifics. He names no witnesses that might have been called, describes no exculpatory evidence that might have been presented, and offers

no legal theories or facts overlooked by his defense counsel. In his affidavit, Murphy's defense counsel states that he decided "as a tactical matter" to present no witnesses after the Government rested because the "facts pertinent to the defense had been elicited on cross examination." Murphy has offered nothing to overcome the presumption that this was a 'sound trial strategy.' Cf. Alexander v. McCotter, 775 F.2d 595, 602-03 (5th Cir. 1985) (allegations that provided "absolutely no particulars" failed to raise a cognizable constitutional claim); Knighton v. Maggio, 740 F.2d 1344, 1349 (5th Cir.) ("One claiming ineffective assistance of counsel must identify specific acts or omissions; general statements and conclusory charges will not suffice."), cert. denied, 469 U.S. 924 (1984).

Moreover, the record belies Murphy's assertion that his attorney refused to let him testify in his own behalf. Murphy's attorney stated on the record that he had advised Murphy of his right to testify and that, pursuant to the attorney's recommendation, Murphy had chosen not to testify. The trial judge specifically asked Murphy whether this was correct, and Murphy answered in the affirmative. Under the circumstances, we cannot say that the attorney acted unreasonably in advising Murphy not to testify.

Finally, we note--as did the trial judge at sentencing--that the evidence of Murphy's guilt is overwhelming. The testimony of Carol Smith, the tapes of Murphy's phone calls to Smith, and Murphy's own taped statement establish that Murphy thought he had

a bone to pick with the supervisors at the New Orleans post office. The testimony of Carol Smith, the postal workers present on the evening of December 14th, and the FBI agents who responded to the incident establish that Murphy violently and deliberately acted out his frustrations. It is unlikely that even the most competent attorney could have obtained an acquittal on any of the charges against Murphy. We conclude, therefore, that Murphy cannot prevail on his ineffective assistance of counsel claim.

### III.

For the foregoing reasons, we AFFIRM the judgment of the district court denying Murphy's motion post-conviction relief.