IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3367
Summary Calendar

BOBBY R. HOOKFIN,

Petitioner-Appellant,

v.

TERRY TERRELL, Warden,
Allen Correctional Center and
RICHARD P. IEYOUB, Attorney General, State of Louisiana,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
(C.A. 93-116 M)

(March 11, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.[*]

PER CURIAM:

On his appeal of the denial of federal habeas relief, appellant Hookfin contends that there was insufficient evidence to convict him of attempted possession with intent to distribute cocaine and that Louisiana's obstruction of justice statute is unconstitutionally vague. There is no merit in either of these contentions, and we affirm the district court's judgment.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

As an initial matter, we note that although Hookfin filed a motion with this court to proceed in forma pauperis on appeal, the district court had already granted this status. Hookfin's motion is therefore denied as unnecessary.

1. Sufficiency of Evidence

Hookfin seems to contend that he was convicted of attempted possession with intent to distribute bags containing cocaine residue. This is incorrect, he was charged and convicted of attempted possession with intent to distribute cocaine, not baggies. The evidence showed that Hookfin resided at a New Orleans residence where he arranged with an undercover police officer to sell two ounces of cocaine costing $2,800. Just as the deal was about to be consummated, Hookfin was warned by his brother's beeper that police were in the area, and, with the undercover officer watching, Hookfin's co-defendants flushed the cocaine and the cash down the toilet. This evidence was never recovered, but the police have maintained copies of the bills destined for the transaction. There was eyewitness testimony about the deal. There was drug-dealing paraphernalia in the residence, and cocaine residue was found in plastic baggies.

If this wasn't enough evidence to convict Hookfin, it is difficult to see what would be sufficient.

2. Louisiana Obstruction of Justice Statute

Louisiana Revised Stat. Ann. § 14:130.1 (West 1986).

Hookfin was charged with obstruction of justice by flushing cocaine and money down a toilet to prevent police

officers, who were in the process of entering his fortified residence to serve a search warrant, from obtaining the drugs and money for use as evidence against him. He alleges, however, that the cited state statute is unconstitutionally vague on its face because people of ordinary intelligence could interpret it in a variety of meanings, so that no one knows precisely what conduct is proscribed. It is well settled that a plaintiff who engages in some conduct that is clearly proscribed by the law cannot complain of its vagueness as applied to the conduct of others. Home Depot, Inc. v. Guste, 773 F.2d 616, 627 (5th Cir. 1985), citing Village of Hoffman Estates v. FlipSide, Hoffman Estates, 455 U.S. 489, 495, 102 S. Ct. 1186 (1982). Further, a statute is not unconstitutional unless it is vague in all of its applications. Id.

The Louisiana statute says that obstruction of justice occurs if a defendant has knowledge that, e.g., tampering with evidence, "reasonably may or will affect an actual or potential present, past or future criminal proceeding . . . " Ordering the destruction of the evidence of a drug deal that the defendant himself has orchestrated easily falls within this statute. If Hookfin did not believe that the evidence reasonably might affect a criminal proceeding against him, why would he have bothered to try to destroy it? This challenge is meritless.

AFFIRMED.