

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-3684  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DWIGHT MCKENNA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA-93-2015(CR-91-466-A))

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(June 3, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant McKenna was convicted of tax evasion and brings this action under 28 U.S.C. § 2255 alleging ineffectiveness of trial counsel. The district court denied relief and rendered a detailed and well-reasoned opinion in which we find no reversible error. We affirm. Our review of the record convinces us that it fully supports the district court's findings.

First McKenna argues that the district court erred when it found that counsel's decision not to cross-examine McKenna's

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

accountant was trial strategy, not error. Whether or not to cross-examine a particular witness is a question of trial strategy. See Garland v. Maggio, 717 F.2d 199, 206 (5th Cir. 1983). To succeed Appellant must show how cross examination would have changed the trial's outcome. See id. This Appellant has failed to do. Additionally, Appellant's claim of inconsistent testimony by the witness, which is raised in his reply brief, comes too late. United States v. Faubion, \_\_\_ F.3 \_\_\_ (5th Cir. April 22, 1994), No. 93-8508, 1994 W.L. 114654 at \*7 n.23.; United States v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989).

Next Appellant attacks the district court's finding that Appellant was present when it made its ruling regarding cross-examination and that Appellant understood the court's order. We examine for clear error, United States v. Casiano, 929 F.2d 1046, 1051 (5th Cir. 1991), and find none. The record supports the district court completely. In a related argument, McKenna contends for the first time that the district court assumed he understood simply because he was present. We do not consider this argument because it was not raised in the district court.

Relying on United States v. Cronic, 466 U.S. 648 (1984), Appellant contends prejudice is presumed because counsel's failure to cross-examine amounted to constructive denial of counsel. This case is different than Cronic, however, because here it has been shown that the decision was a strategic one made after full information and consultation. We note as well that nowhere has Appellant attempted to show what, if any, helpful information would

have resulted from cross-examination.

We also find no fault with the district court's conclusion that Appellant's guilt was overwhelmingly established.

AFFIRMED.