

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4936

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN MOLINA,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(6:92cr55(1))

(July 21, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Juan Molina was charged in a two-count indictment with conspiring to possess with intent to distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and with using and carrying a firearm during a drug-trafficking offense, in violation of 18 U.S.C. § 924(c). A jury

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

convicted him of both counts. The district court sentenced Molina to ninety-seven months in prison and a three-year term of supervised release; the court also imposed upon him a \$100 special assessment. Molina now appeals his conviction and sentence. We affirm the judgment of the district court.

I.

Molina's sole argument on appeal is that his trial counsel, J. Keith Mullins, provided constitutionally deficient representation. Molina asserts that subsequent to his conviction, he discovered that at the same time Mullins was representing him, Mullins himself was under indictment for possession of marijuana and cocaine with the intent to distribute. Four months after Molina's conviction, Mullins pleaded guilty to possession of marijuana. See United States v. Mullins, No. 93-5335 (5th Cir. April 22, 1994) (unpublished). Molina also asserts that Mullins had possible mental problems during Molina's trial. He states that in the case against Mullins, the district court departed downward from Mullins' guideline sentencing range based upon Mullins' "diminished capacity" and recommended that Mullins serve his sentence in an institution that would "address his mental health issues." Hence, Molina contends that Mullins was ineffective under Sixth Amendment standards in the representation of Molina because of (1) a possible conflict of interest arising from Mullins' own drug indictment which was pending at the time of Molina's trial,

(2) Mullins' mental illness, mental problems, or "diminished capacity," or (3) some combination of both.

Because the circumstances which Molina now discusses were not discovered until after Molina's conviction, they were not brought to the attention of or in any way developed in the district court. Allegations of ineffective assistance of counsel will generally not be addressed on appeal unless they have first been presented to the district court so that an appellate record may be developed. United States v. McCaskey, 9 F.3d 368, 380-81 (5th Cir. 1993), cert. denied, 114 S. Ct. 1565 (1994); United States v. Casel, 995 F.2d 1299, 1307 (5th Cir.), cert. denied, 114 S. Ct. 1308 (1993). An exception to this general rule is made only when the record is sufficiently developed with respect to the merits of the claim. McCaskey, 9 F.3d at 381; Casel, 995 F.2d at 1307.

In the instant case, the record provides no details or information concerning Mullins' conviction or mental difficulties. The information concerning Mullins on which Molina now relies was apparently supplied to Molina's appellate counsel by the clerk's office in the Western District of Louisiana. Hence, Molina should pursue his ineffective-assistance claim in a § 2255 context rather than on direct appeal. See McCaskey, 9 F.3d at 381; Casel, 995 F.2d at 1307.

Molina also requests that this court appoint him a Spanish-speaking attorney for his § 2255 proceeding. When an indigent prisoner is ordered to receive an evidentiary hearing upon his

§ 2255 petition, he is entitled to representation by appointed counsel at that hearing. United States v. Vasquez, 7 F.3d 81, 83 (5th Cir. 1994); Alford v. United States, 709 F.2d 418, 423 (5th Cir. 1983); see Rule 8(c) of the Rules Governing § 2255 Proceedings. Molina has already been certified as a pauper. If following the presentation of a § 2255 motion the district court determines that a hearing is necessary, counsel should then be appointed to represent Molina at that proceeding.

II.

For the foregoing reasons, the judgment of the district court is AFFIRMED.