

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-4957

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM C. MEDLEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(CA 90 1871 (CR88 50075 01))

(April 4, 1994)

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

PER CURIAM:*

William Medley appeals the district court's denial of his motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255 (1988). Finding no error, we affirm.

While on parole, Medley was arrested and convicted of one count of distribution of cocaine in violation of 21 U.S.C. § 841(a)(1) (1988).¹ The district court sentenced Medley to a term

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ Medley was convicted pursuant to his plea of guilty.

of 120 months imprisonment, "to run concurrently with any other sentence the defendant is presently serving."

As a result of Medley's arrest, the Parole Commission issued a parole violator warrant, charging Medley with leaving the district of his parole supervision without permission and criminal activity in violation of parole. After Medley was sentenced by the district court, the Parole Commission lodged the violator warrant as a detainer against Medley. After completing a dispositional review of the detainer, the Parole Commission let the detainer stand. The Parole Commission also ordered that either a dispositional review be held in March 1994 or that a dispositional revocation hearing be held upon the satisfaction of the sentence imposed by the district court. The Parole Commission's actions effectively prevented the sentence imposed by the district court to run concurrently with his parole violator term))i.e., the remainder of his old sentence.

Medley filed a motion to set aside, vacate or correct sentence pursuant to 28 U.S.C. § 2255, requesting that the district court order the Parole Commission to allow the running of concurrent sentences. He also claimed that he was sentenced pursuant to a defective guilty plea because an implied element of his plea bargain was the promise that the sentence imposed by the district court would run concurrently with any other sentence.

Without holding an evidentiary hearing, the district court denied Medley relief under § 2255 based on its conclusion that it lacked jurisdiction to order the Parole Commission to impose its

sentence on its parole violator warrant to run concurrently with Medley's sentence for distribution of cocaine. Regarding Medley's guilty plea, the district court found no evidence in the record to support his conclusory allegations of an implied element of his plea bargain. On appeal, Medley argues that the district court erred in: (1) concluding that it had no jurisdiction to order the Parole Commission to run concurrently the remainder of Medley's old sentence with his new sentence; and (2) failing to hold an evidentiary hearing.

We first address the district court's conclusion regarding its jurisdiction. "Under 18 U.S.C. § 4210(b)(2), when a federal parole violator receives a second prison sentence for a crime committed while on regular parole, the Parole Commission has exclusive jurisdiction to decide whether the parole violater term which it imposes will run concurrently or consecutively with the second sentence." *Tijerina v. Thornburgh*, 884 F.2d 861, 864 (5th Cir. 1989). "In the exercise of this discretion, the Parole Commission has adopted, and the Supreme Court has approved of, a policy favoring the consecutive service of sentences, and the delayed execution of parole violator warrants until the prison term for the second crime has expired." *Id.* "Even when the second sentencing judge orders concurrent prison terms for the second crime and the parole violation, the Parole Commission may contravene this order." *Id.* Based on *Tijerina*, the district court correctly determined that it lacked jurisdiction to order the Parole Commission to run

concurrently the remainder of Medley's old sentence with his new sentence for distribution of cocaine.

Medley maintains that pursuant to 18 U.S.C. § 3584 (1988),² the district court had the jurisdiction to order the Parole Commission to run concurrently its parole violator term with Medley's new sentence. Although § 3584 gives a district court the discretion to designate a sentence as consecutive or concurrent with respect to a defendant already subject to an undischarged term of imprisonment, we believe that section to be inapplicable here. Section 3584 was enacted pursuant to the Sentencing Reform Act of 1984, which repealed 18 U.S.C. §§ 4201-18))i.e., those sections dealing with the Parole Commission and parole generally. Those sections were to remain applicable, however, for five years after November 1, 1987. Consequently, § 4210(b)(2))the section giving the Parole Commission exclusive jurisdiction over parole violator terms))was still valid authority when the Parole Commission ordered the detainer to stand.³ Section 3584 therefore does not seem to apply to this parole situation. Moreover, Medley has not cited, and we cannot find, any authority for the proposition that § 3584

² Section 3584(a) provides that "[i]f multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt."

³ The Parole Commission let the detainer stand in August 1991.

gives a district court any discretion over a parole violator term under any circumstances. We therefore reject his argument.

Medley also contends that the district court abused its discretion by failing to hold an evidentiary hearing when deciding his claim that "an implied element of [the] plea bargain [was] that the trial court would order that the sentences run concurrently." "A motion brought under 28 U.S.C. § 2255 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." *United States v. Bartholomew*, 974 F.2d 39, 41 (5th Cir. 1992). "If the record is clearly adequate to dispose fairly of the allegations, the court need inquire no further. A hearing is also unnecessary when the petitioner's allegations are 'inconsistent with his conduct' and when he does not offer 'detailed and specific facts' surrounding his allegations." *United States v. Smith*, 915 F.2d 959, 964 (5th Cir. 1990) (citation omitted) (attribution omitted). Medley made only conclusory allegations concerning the alleged implied promise. Moreover, in the district court's colloquy with Medley regarding his plea, Medley explicitly stated that (1) his plea was voluntary, (2) no unstated agreements existed, and (3) no one had made any predictions concerning the sentence that would be actually imposed by the court. Because the record was clearly adequate to dispose of Medley's conclusory allegations, an evidentiary hearing was not required.

Accordingly, the district court's judgment is AFFIRMED.