

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5111
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BILLY RAY TATUM,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. CR 91-50073-01
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Billy Ray Tatum pleaded guilty to using and carrying a firearm during and in relation to a drug trafficking offense and to possessing cocaine base and cocaine with the intent to distribute it. He was sentenced to 210 months, less time served, on the drug count, and the mandatory, consecutive 60-month sentence on the weapons charge.

Tatum then filed this 28 U.S.C. § 2255 motion, alleging ineffective assistance of counsel. Tatum asserted that his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

attorney told him that he had obtained a plea bargain for a total sentence of no more than nine years. The district court denied the motion.

Tatum has alleged the exact terms of the promise, the date his attorney made the alleged promise, and the identity of an eyewitness to it, Louise Howard. He has also filed an affidavit from Howard to support his claim. However, Tatum entered his guilty plea on May 18, 1992. He asserts, and the Howard affidavit supports, that the promise concerning the nine-year sentence was made on August 22, 1992, three months after he entered his plea. Based on this sequence of events, Tatum cannot establish that the alleged promise caused him to plead guilty and his ineffective assistance claim must fail. See United States v. Smith, 915 F.2d 959, 964 (5th Cir. 1990). Because the record is adequate to dispose of Tatum's claims, the district court did not err by denying the motion without holding an evidentiary hearing. Id.

AFFIRMED.