IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5201

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONNIE W. REDMON,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(4:93 CV 86 (4:92 CR 10))

(June 16, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

I.

Ronnie Redmon pleaded guilty to using a firearm during a drug-trafficking offense and to conspiring to possess amphetamine with the intent to distribute. Redmon did not take a direct appeal, but filed a 28 U.S.C. § 2255 motion. The district court denied the motion. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

II.

The Government filed no pleadings in the district court. On appeal, the government contends that some of Redmon's claims are procedurally barred. The Government waived the procedural bar because it did not raise the issue below. U.S. v. Drobny, 955 F.2d 990, 995 (5th Cir. 1992).

III.

Redmon argues that the search warrant for his residence was not supported by probable cause and that items found at the residence should have been excluded from evidence. A valid and unconditional guilty plea waives all nonjurisdictional defects that occurred before the plea. Tollett v. Henderson, 411 U.S. 258, 266-67 (1973). Redmon's plea was valid and not conditioned on preservation of his right to appeal the probable cause issue. We find no problem with the search warrant and the inclusion of the contested items in evidence.

IV.

Redmon contends that his counsel was ineffective for failing to move for exclusion of evidence. Redmon also contends that counsel's ineffective performance led to an involuntary plea. To prevail on an ineffective-assistance-of-counsel claim, a movant must show "that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. 668, 687.

In particular, Redmon alleges that the May 10, 1991 affidavit of Deputy Sheriff Michael Tatar was insufficient to provide

probable cause for the May 3, 1991 warrant and search. The warrant indicates that an affidavit was attached to it. Tatar's May 10 affidavit indicates that Tatar already had executed the warrant and had seized evidence. It could not have been the affidavit on which the judicial officer relied when finding probable cause for a search.

No copy of any affidavit prepared on or before May 3 appears in the record. We "decline to review controversies in which the record is not supplied to [it]." U.S. v. Hinojosa, 958 F.2d 624, 623-33 (5th Cir. 1992). The Government has appended to its brief what appears to be a copy of the affidavit. We "will not ordinarily enlarge the record on appeal to include material not before the district court." U.S. v. Flores, 887 F.2d 543, 546 (5th Cir. 1989). Redmon has not demonstrated ineffective assistance of counsel or an involuntary plea.

Redmon asserts for the first time in his reply brief that counsel failed to perfect his appeal as he had requested. We will not consider a new claim raised for the first time in an appellate reply brief. U.S. v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989).

V.

Redmon contends that the trial court lacked jurisdiction over him. He also contends that police failed to comply with the knock-and-announce requirement when they executed the search warrant. Redmon did not raise these issues in the district court. We will not consider § 2255 issues raised for the first time on appeal.

U.S. v. Cates, 952 F.2d 149, 152 (5th Cir.), cert. denied, 112 S. Ct. 2319 (1992).

VI.

Redmon argues that the Government violated its Petite policy by prosecuting him on federal charges. See Petite v. U.S., 361 U.S. 529 (1960). The Petite policy is an internal policy of the Justice Department and does not bar prosecution. U.S. Paternostro, 966 F.2d 907, 912 (5th Cir. 1992). The policy raises no constitutional or jurisdictional issues appropriate for a § 2255 appeal. U.S. v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

VII.

Redmon alleges that the district court erred by denying his § 2255 motion without holding an evidentiary hearing. A district court may dispense of a § 2255 motion without a hearing if "'the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief[.]'" U.S. v. Drummond, 910 F.2d 284, 285 (5th Cir. 1990) (quoting 28 U.S.C. § 2255; emphasis added in Drummond), cert. denied, 489 U.S. 1104 (1991). We find that the district court did not err in this regard.

AFFIRMED.