UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5573
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM QUINN,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(CR-90-60011-01)

(July 27, 1994)

Before POLITZ, Chief Judge, JOLLY and BENAVIDES, Circuit Judges.

POLITZ, Chief Judge:[*]

William Quinn appeals the denial of relief under 28 U.S.C. § 2255 from his conviction and sentence for money laundering. We affirm.

Background

According to testimony at trial, Quinn became acquainted with

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and corresponded with Arif Shad who, like Quinn, was a merchandise broker. During one exchange Quinn asked Shad if he had any friends who wanted to hide large amounts of money. Shad immediately contacted the Customs Service and, under their direction, called Quinn purporting to have found drug dealers interested in laundering illegally-gained money. Shad and two undercover agents posing as drug dealers arranged for Quinn to travel to Louisiana where the agents asked Quinn to launder drug money. The agents testified that Quinn was receptive of the offer. The meeting was taped. Quinn agreed to launder $50,000 in exchange for a $2000 fee. At a later rendezvous in Dallas Quinn accepted the money to be laundered and promptly was arrested.

Quinn, represented by appointed counsel at trial, claimed entrapment. At the trial Quinn testified; no other defense witnesses were called. The jury convicted Quinn and he was sentenced to 37 months imprisonment plus a term of supervised release. We affirmed on direct appeal.

Quinn now seeks section 2255 relief, contending that his counsel failed to call as witnesses three people he had identified as having favorable testimony on the entrapment issue. The magistrate judge ordered Quinn to file a supplemental memorandum setting forth: (1) the name, address, and telephone number of the uncalled witnesses; (2) their anticipated testimony; (3) their availability for and willingness to testify at a hearing; and (4) the prejudice inuring to him as a result of counsel's failure to call each.

Quinn submitted the affidavits of three persons. The first, which was executed prior to the trial, claimed that Quinn had declined to cooperate in the crime and had been coerced by the undercover agents into participating. A second affiant stated that, as he understood the matter, Quinn believed the deal for which he traveled to Louisiana was legitimate. The third affidavit merely stated that Quinn's attorney had failed to pursue the testimony of these witnesses. The present whereabouts of the first affiant were unknown and she was not available to testify at a hearing before the court *a` quo*. The magistrate judge concluded that the witness's unavailability made a hearing unnecessary and that, even if a hearing were afforded, her testimony as reflected in the affidavit likely would not have altered the result in light of the plethora of trial evidence of Quinn's contrary predisposition. The magistrate judge also determined that counsel's decision not to call the other two potential witnesses was within the wide range of reasonable conduct afforded trial counsel. The district court adopted the report of the magistrate judge and denied relief. Quinn timely appeals.[1]

Analysis

Quinn claims the district court erred in denying section 2255 relief without an evidentiary hearing. Such relief may be denied without a hearing only where "the motions, files, and records of the case conclusively show that the prisoner is entitled to no

[1]Complaints other than the failure to call witnesses are not pursued on appeal and are deemed abandoned. **Hobbs v. Blackburn**, 752 F.2d 1079 (5th Cir.), cert. denied, 474 U.S. 838 (1985).

relief."[2] We review the denial of an evidentiary hearing for an abuse of discretion.[3]

To succeed on a claim of ineffective assistance Quinn must demonstrate that counsel's performance was deficient and that he was prejudiced thereby.[4] To establish prejudice Quinn must persuade that had the omitted witnesses testified, the jury verdict likely would have been different. We note in passing that ineffective assistance claims alleging failure to call witnesses are particularly disfavored because decisions on the presentation of testimonial evidence are intertwined with inherently subjective questions of trial strategy.[5] The district court did not abuse its discretion in accepting the magistrate judge's recommendation that a hearing need not be afforded on the basis of an affidavit from a concededly unavailable witness.[6]

Nor did the district court abuse its discretion in finding that Quinn had not established prejudice. Had the affiants testified, they would not likely have altered the jury's verdict given the strong evidence of predisposition adduced against Quinn,

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[2]28 U.S.C. § 2255; **United States v. Bartholomew**, 974 F.2d 39, 41 (5th Cir. 1992).

[3]**Bartholomew**.

[4]**Strickland v. Washington**, 466 U.S. 668 (1984).

[5]**United States v. Cockrell**, 720 F.2d 1423 (5th Cir. 1983), cert. denied, 467 U.S. 1251 (1984).

[6]It is clear from the record that the first affiant was unavailable to testify. An unavailable witness obviously can add nothing to a record which otherwise "conclusively show[s] that the prisoner is entitled to no relief." 28 U.S.C. § 2255; **Bartholomew**.

including the audio tapes of the transactions, the testimony of the agents, and Shad's testimony that even before the government became involved Quinn expressed his interest in laundering money. The record before the district court provided an adequate basis upon which to make the essential section 2255 decision without the necessity of conducting a hearing.

AFFIRMED.