

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7056
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO ANGEL COLINDRES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-B-91-060 (CR-B-89-232)
- - - - -

August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Pedro Angel Colindres argues that the prosecutor improperly expressed his personal opinion by commenting on the trial testimony given by Sergio Solis during closing argument. To prevail, Colindres must show that the prosecutor's comment so infected the trial with unfairness as to make the resulting conviction a denial of due process. Rogers v. Lynaugh, 848 F.2d 606, 608 (5th Cir. 1988); see also United States v. McCollom, 664 F.2d 56, 58 (5th Cir. 1981), cert. denied, 456 U.S. 934 (1982). Under this test Colindres must demonstrate that the comment

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

rendered his trial "fundamentally unfair," by showing "a reasonable probability that the verdict might have been different had the trial been properly conducted." Rogers, 848 F.2d at 609 (footnote and citations omitted).

In light of the substantial evidence of Colindres's guilt, see United States v. Colindres, No. 89-6296, 1-3 (5th Cir. August, 23, 1990) (unpublished), there is no reasonable probability that the verdict might have been different had the prosecutor not made his statements regarding Solis's truthfulness. Thus, the prosecutor's remarks did not render Colindres's trial fundamentally unfair.

Liberalistically construed, Colindres's appellate brief contends that Colindres's trial counsel provided ineffective assistance of counsel by not objecting or requesting a limiting instruction to the prosecutor's comments. To obtain habeas relief based on his claim of ineffective assistance of counsel, Colindres must show that counsel's deficient performance rendered the result of the trial "unreliable or the proceeding fundamentally unfair." Lockhart v. Fretwell, ___ U.S. ___, 113 S.Ct. 838, 842-44, 122 L.Ed.2d 180 (1993). If Colindres fails to demonstrate adequate prejudice, the alleged deficiencies in his counsel's performance need not be considered. Sawyer v. Butler, 848 F.2d 582, 588-89 (5th Cir. 1988), affirmed, 497 U.S. 227 (1990); see Strickland v. Washington, 466 U.S. 668, 700, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Even if the prosecutor's comment during his closing argument was improper, it did not render the result of Colindres's trial

unreliable or his trial fundamentally unfair. Thus, Colindres has failed to show that he was adequately prejudiced by the failure to object or request a limiting instruction.

If the record is adequate to evaluate the claims in a § 2255 motion fairly, the district court need not hold an evidentiary hearing. See United States v. Smith, 915 F.2d 959, 964 (5th Cir. 1990). Because such is the case here, the district court had no reason to convene an evidentiary hearing. The district court's denial of Colindres's § 2255 motion is AFFIRMED.