

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7114
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUANITA RONE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-L-91-159; (CA-L-92-143))

(March 1, 1994)

Before POLITZ, Chief Judge, JONES and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Juanita Rone and her husband were convicted by a jury of conspiracy to possess marihuana with intent to distribute in violation of 21 U.S.C. § 846. On appeal we affirmed her conviction. Rone then sought habeas corpus relief under 28 U.S.C.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

§ 2255, claiming ineffective assistance of counsel. Following an evidentiary hearing the district court denied relief. Rone timely appealed.

Rone contends that Oscar Pena, her trial attorney, erroneously advised her not to testify, using such strong terms that she believed she had no choice. At the section 2255 hearing Pena testified that he had informed Rone of her right to testify but advised against it because she had much to lose and little to gain from a mere denial of her participation. The government's case focused heavily on her husband but Pena was concerned that the jury might become convinced that she was the moving force after observing her on the stand. From his own observation, Pena believed the wife to be the smarter and the dominant member of the couple. Pena also was concerned that Rone might expose herself to perjury charges. According to Pena, Rone agreed with and accepted his advice.

After hearing Rone's and Pena's testimony the district court found that Rone knew that she had the right to testify. That factual finding, obviously based on a credibility call, is not clearly erroneous.¹ Moreover, the district court, which had conducted the trial, found that Pena's advice was sound. Accepting the factual findings and according *de novo* review to the adequacy of Pena's performance, we agree. Pena did not prevent Rone from

¹ See **United States v. Hoskins**, 910 F.2d 309 (5th Cir. 1990) (the reasonableness of an attorney's performance is reviewed *de novo* and the underlying fact-findings are reviewed for clear error).

testifying and his recommendation that she not do so easily falls within the broad span of reasonable trial strategy.²

AFFIRMED.

² Cf. Hollenbeck v. Estelle, 672 F.2d 451 (5th Cir.), cert. denied, 459 U.S. 1019 (1982).