

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7123  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES BOYD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(CA-92-116 (CRD89-121-B))

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(April 6, 1994)

Before POLITZ, Chief Judge, DAVIS and SMITH, Circuit Judges.

PER CURIAM:\*

James Boyd was convicted by a jury of possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(b)(1)(A), possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1), and possession of a firearm during and in relation to a drug-trafficking crime in contravention of 18 U.S.C.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

§ 924(c). The trial court sentenced him to 25 years imprisonment; we affirmed his conviction and sentence. Boyd sought post-conviction relief *pro se* under 28 U.S.C. § 2255, which the district court summarily denied. We affirm.

Boyd's claims are wholly frivolous. At the threshold he contests jurisdiction. In his opening brief he based his challenge on the ground that he initially was arrested by state authorities. In response, the government pointed out that a federal arrest warrant issued pursuant to a federal indictment. Boyd thereupon reframed his jurisdictional challenge to contend that his offense was committed within a state and therefore outside the territorial jurisdiction of the United States. That argument is too vacuous to warrant a response.<sup>1</sup>

Boyd also contends that he was denied standing to challenge the validity of a search. He did not raise a fourth amendment challenge before or during trial and, accordingly, there could not have been a standing issue before the trial court. He maintains that he was not brought to trial within the time constraints of the Speedy Trial Act, 18 U.S.C. § 3161. The record reflects that Boyd, through his counsel, expressly waived his Speedy Trial Act rights. He complains of the admission of an authenticated copy of his prior convictions. That evidence was plainly admissible to prove an essential element of the charge of felon in possession of a

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<sup>1</sup>**United States v. Madkins**, 14 F.3d 277 (5th Cir. 1994).

firearm.<sup>2</sup> Invoking **Cage v. Louisiana**,<sup>3</sup> he challenges the "reasonable doubt" instruction given to his jury. The instruction, however, clearly was not a **Cage** instruction; rather, it tracked the Fifth Circuit pattern charge.<sup>4</sup>

The claims are similarly meritless. Boyd contends that he was indicted by a grand jury that did not contain persons under the age of 21 in violation of the twenty-sixth amendment. As his factual predicate he asserts that the grand jurors were drawn from a defective list of registered voters compiled in December 1989. Boyd's indictment was returned on October 27, 1989.

Several claims consist of mere conclusory allegations with no suggestion of a specific factual basis. Such allegations do not warrant an evidentiary hearing, much less relief.<sup>5</sup> Boyd contends that a false affidavit accompanied the search warrant application but he does not identify the false statement or set forth any facts indicating that the affiant deliberately or recklessly misled the magistrate. He contends that the government knowingly presented perjured testimony to the grand jury but does not state what that testimony was or the basis on which he claims that the government

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<sup>2</sup>**United States v. Dula**, 989 F.2d 772 (5th Cir.), cert. denied, 114 S.Ct. 172 (1993).

<sup>3</sup>498 U.S. 39 (1990).

<sup>4</sup>Fifth Circuit Pattern Jury Instructions (Criminal), No. 1.06 at 16 (1990 ed.).

<sup>5</sup>Rules Governing Section 2255 Proceedings, Rule 2(b); **Young v. Herring**, 938 F.2d 543, 560 (5th Cir. 1991) (on remand from *en banc* court), cert. denied, 112 S.Ct. 1485 (1992); **Rodriguez v. United States**, 473 F.2d 1042 (5th Cir. 1973).

knew it was perjured. He contends that pretrial publicity biased the jury but does not identify the publicity or state any facts indicating that it affected the jurors. Furthermore, the record lacks any evidence of such.

Boyd also raises claims that we previously rejected on direct review: discriminatory exercise of peremptory challenges in violation of **Batson v. Kentucky**<sup>6</sup> and insufficiency of the evidence. We will not review those claims again.<sup>7</sup>

Most of Boyd's claims were waived because they were not timely raised in the trial court. Boyd claims ineffective assistance of counsel on the grounds that his attorney failed to preserve these meritless issues. That manifestly is not ineffective lawyering;<sup>8</sup> indeed, it is the very opposite -- it is ethical, responsible lawyering. The additional grounds on which Boyd claims ineffective assistance were not raised in his motion and therefore are not properly before us. In any event, they too are meritless. Boyd complains that his lawyer did not adequately investigate his case; had he done so, he supposedly would have discovered that Boyd was not the last person in his car (where the crack cocaine was found) nor the person at the 808 Goodwin Avenue residence who sold cocaine base to a police informant. A failure-to-investigate claim requires more than the bald assertion that "My lawyer would have

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<sup>6</sup>476 U.S. 79 (1986).

<sup>7</sup>**United States v. Santiago**, 993 F.2d 504, 506 n.4 (5th Cir. 1993).

<sup>8</sup>**United States v. Stumpf**, 827 F.2d 1027 (5th Cir. 1987).

learned I didn't do it if he had investigated." The petitioner must allege specific ways in which his attorney's investigation or decision not to investigate was unreasonably deficient. Boyd also criticizes his lawyer because witnesses were not subpoenaed, but does not identify the witnesses or suggest how their testimony would have been beneficial. Boyd's claim of ineffective assistance of counsel, like the other matters raised herein, is frivolous.

AFFIRMED.