

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7193

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANTIAGO CASIANO, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA B92 038 (CRB87 484 01))

October 27, 1993

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Santiago Casiano, Jr., pleaded guilty to possession with intent to distribute cocaine. The district court sentenced him to 22 years imprisonment, 7 years supervised release, and a mandatory \$50.00 assessment. Casiano did not file a direct appeal of his conviction or sentence.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In a prior appeal, we remanded Casiano's sentence so the district court could vacate the supervised release term and impose a special parole term. In accordance with our ruling, the district court modified the sentence, imposing a seven year special parole term.

Casiano now argues that the district court failed to advise him of the consequences of special parole, and that he received ineffective assistance of counsel because his lawyer failed to advise him of the special parole term, and failed to appeal imposition of the supervised release term. The district court denied the motion. Casiano appeals. We affirm.

I

Casiano argues that the district court violated Rule 11 of the Federal Rules of Criminal Procedure by not advising him of the consequences of special parole. Rule 11 requires a district court to advise a defendant of the maximum possible penalty provided by law, including any special parole term, but "[t]his circuit has held that § 2255 relief for a violation of Rule 11 is available only upon a showing of prejudice by the defendant." United States v. Armstrong, 951 F.2d 626, 629 (5th Cir. 1992).

Casiano has not demonstrated prejudice justifying collateral relief. In fact, Casiano's full sentence, computed by adding the incarceration time and the parole time, does not exceed the statutory maximum. The district court informed Casiano of the statutory maximum. As a result, Casiano cannot challenge as

prejudicial any failure to inform him about the special parole term.

II

Casiano argues that he received ineffective assistance of counsel because his lawyer failed to advise him about special parole and supervised release. Casiano must affirmatively demonstrate prejudice, which, in the guilty plea context, means that a reasonable probability must exist that, but for counsel's errors, he would not have pleaded guilty and would have opted for trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

As the magistrate judge noted, Casiano failed to demonstrate that had he known about special parole, he would not have pleaded guilty. Casiano's allegation that he would have opted for trial seems all the more improbable given the fact that the district court informed him of the maximum sentence, and he still entered a guilty plea.

AFFIRMED.