

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7528

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN CATRIALL WATTS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
(CR S92-00077-P-R)

(June 6, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

I.

Darryl Deschamp, a Mississippi state trooper, stopped John Watts for speeding. Watts told Deschamp that the vehicle belonged to his brother, Holland, who was a passenger in the car. Watts also told Deschamp that he and Holland were travelling from Texas to Alabama to visit a contractor. Deschamp then questioned

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Holland, who stated that they were travelling from Texas to Alabama to see his niece. Deschamp noticed a strong smell of marijuana coming from the car and asked Holland for consent to search the vehicle. Deschamp and Holland disagree over whether Holland gave his consent.

After opening the trunk, Deschamp again detected a strong smell of marijuana. Deschamp opened a bag and saw what appeared to be marijuana. Watts and Holland testified that they could not smell the marijuana until after Deschamp had opened the bag and had cut the package open. Deschamp opened another bag and saw marijuana in that bag as well. Authorities discovered a loaded revolver inside a third bag during a routine inventory search. A jury found Watts guilty of possession with intent to distribute marijuana and use of a gun during the commission of a drug offense.

II.

Watts argues that he received ineffective assistance of counsel because his trial lawyer did not try to suppress the seized marijuana. We generally do not resolve ineffective assistance of counsel claims on direct appeal unless they have been raised before the district court. U.S. v. Kinsey, 917 F.2d 181, 182 (5th Cir. 1990). We may address a claim of ineffective assistance of counsel if the record contains sufficient detail concerning the attorney's conduct. The record contains sufficient detail on this issue.

To demonstrate ineffectiveness of counsel, Watts must establish that counsel's performance fell below an objective standard of reasonable competence and that he was prejudiced by the

deficient performance. Lockhart v. Fretwell, 113 S. Ct. 838, 842 (1993). We presume that counsel's conduct fell within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 689 (1984).

Officer Deschamp testified that Holland consented to a search of the vehicle. Although Holland testified that he did not consent, Watts has not shown a reasonable probability that the credibility issue would have been resolved in Watts' favor. Watts has not proven that he was prejudiced by the failure to suppress.

AFFIRMED.