

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7622
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT RAYMOND LOVELL, a/k/a
Bobby Raymond Lovell,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 93-CR-58-1
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Robert Raymond Lovell was convicted of two counts of distribution of cocaine and was sentenced to two concurrent terms of 86 months imprisonment and three years supervised release, a \$1,000 fine, and a \$100 special assessment.

Generally, an ineffective assistance of counsel claim cannot be raised on direct appeal unless the record provides sufficient details about the attorney's conduct to permit review. United States v. Rinard, 956 F.2d 85, 87 (5th Cir. 1992). Lovell

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

challenged the adequacy of Karchmer's representation when he filed his motion for new appointed counsel, and therefore this Court can review his claim on appeal.

To prevail on his ineffective-assistance-of-counsel claim, Lovell must demonstrate that his attorney's performance was deficient and that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 74 (1984). To establish Strickland prejudice Lovell must show that counsel's errors were so serious as to render the trial unreliable or fundamentally unfair. Lockhart v. Fretwell, ___ U.S. ___, 113 S.Ct. 838, 844, 122 L.Ed.2d 180 (1993).

Lovell argues that Karchmer was ineffective for failing to call Lovell's wife, Stephanie, who allegedly would have testified that the cocaine did not belong to him. Assuming it was error for Karchmer not to call Stephanie Lovell who allegedly was willing to offer exculpatory testimony, Lovell cannot demonstrate Strickland prejudice. The evidence established that Lovell negotiated and conducted both cocaine transactions with officer Shelton. Given this overwhelming evidence, Lovell has not shown that the failure to call Stephanie Lovell rendered the trial unreliable or fundamentally unfair. See Lockhart, 113 S.Ct. at 844.

Lovell also argues that Karchmer was ineffective for failing to object to the admissibility of the audiotapes and for failing to request a pretrial hearing to determine the accuracy of the transcripts of the audiotapes. These allegations were not raised

in the district court, but this Court will address the claim if the record provides sufficient details about the attorney's conduct. United States v. Bounds, 943 F.2d 561, 544 (5th Cir. 1991).

At trial the Government introduced, without objection, audiotapes and accompanying transcripts of the first sale and the telephone negotiations leading up to the second sale. Karchmer stated on the record that he had had an opportunity to review the first transcript and that it was accurate. Officer Shelton also testified that the audiotapes and transcripts were accurate. Therefore, Karchmer was not ineffective for failing to make an unsupported objection to the accuracy of the audiotapes or transcripts.

Additionally, Lovell argues that Karchmer should have required the Government to establish the accuracy of the audiotapes and transcripts, but he does not argue that either the audiotapes or the transcripts were inaccurate. Lovell cannot establish Strickland prejudice because even if Karchmer should have made an objection, Lovell has not demonstrated that the admission of the audiotapes and transcripts rendered his trial unreliable or fundamentally unfair. See Lockhart, 113 S.Ct. at 844.

Finally, Lovell argues that he was denied his Sixth Amendment right to compulsory process because Karchmer failed to call Stephanie Lovell as a witness and the district court failed to inform him that he could insist that Stephanie Lovell be called as a witness. A defendant has no fundamental right to

require that a particular witness be called. United States v. Daniels, 572 F.2d 535, 540 (5th Cir. 1978). Unless the attorney's actions deny a defendant his Sixth Amendment right to effective assistance of counsel a defendant is bound by his attorney's decisions. Id. As discussed above, Lovell has not demonstrated that Karchmer was ineffective because he failed to call Stephanie Lovell to testify, and therefore he cannot establish that he was denied his Sixth Amendment right to compulsory process.

AFFIRMED.