UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8280
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VERNON D. TORGERSON

Defendant-Appellant.

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No. 93-8281
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BARBARA TORGERSON

Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Texas
(SA-90-CR-293(1) & SA-92-CA-1050)

(January 10, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

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[1] Local Rule 47.5.1 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."

Vernon and Barbara Torgerson appeal from the denial of their 28 U.S.C. § 2255 motions to vacate, set aside, or correct their sentences, imposed following their pleas of guilty to two counts of mail fraud. We **AFFIRM**.

I.

Our court affirmed the Torgersons' convictions and sentences, but did not consider their claims that their retained trial counsel, Charles Butts, rendered ineffective assistance, because the district court had not had an opportunity to develop the record on those claims. ***United States v. Torgerson***, Nos. 91-5591 & 91-5592 (5th Cir. 1992) (unpublished). The Torgersons filed § 2255 motions, raising 20 grounds for the claim that Butts rendered ineffective assistance of counsel.

The magistrate judge recommended that the motion be denied. The Torgersons filed written objections to the recommendation, contending that they were entitled to an evidentiary hearing. Without conducting a hearing, the district court adopted the recommendation.

II.

The Torgersons contend that the district court erred by denying their § 2255 motion without an evidentiary hearing. We review the denial of an evidentiary hearing only for an abuse of discretion. ***United States v. Bartholomew***, 974 F.2d 39, 41 (5th Cir. 1992).

Pursuant to that rule, the court has determined that this opinion should not be published.

> The question whether an evidentiary hearing is necessary to resolve charges of ineffective assistance depends on an assessment of the record. If the district court cannot resolve the allegations without examining evidence beyond the record, it must hold a hearing. If the record is clearly adequate to dispose fairly of the allegations, the court need inquire no further. A hearing is also unnecessary when the petitioner's allegations are inconsistent with his conduct and when he does not offer detailed and specific facts surrounding his allegations.

United States v. Smith, 915 F.2d 959, 964 (5th Cir. 1990) (internal quotation marks and citations omitted).

In ***Strickland v. Washington***, 466 U.S. 668 (1984), the Supreme Court established the well known two-part standard for ineffective assistance claims:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense.

Id. at 687. To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome". ***Id***. at 694.

"[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel". ***Hill v. Lockhart***, 474 U.S. 52, 58 (1985). "[I]n order to satisfy the `prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's

errors, he would not have pleaded guilty and would have insisted on going to trial". ***Id***. at 59.

The Torgersons' briefs contain little more than conclusory assertions that they were entitled to an evidentiary hearing, and at most touch on just six of the 20 grounds for ineffective assistance set forth in their § 2255 motions. Of course, issues not raised on appeal are abandoned. ***Hobbs v. Blackburn***, 752 F.2d 1079, 1083 (5th Cir.), *cert. denied*, 474 U.S. 838 (1985). Accordingly, we consider only the six grounds mentioned in the briefs; some of those lack legal support or analysis.

A.

The Torgersons contend that Butts was ineffective for failing to file a motion to dismiss the indictments on the ground that the facts of their offenses do not constitute mail fraud. Our court held on direct appeal that the indictment was sufficient. Accordingly, the Torgersons have not demonstrated prejudice. The record is adequate to dispose of this ground; therefore, an evidentiary hearing was not necessary.

B.

The Torgersons assert that Butts made "numerous representations" that directly affected their decisions to plead guilty. However, they did not identify them in their briefs and, instead, merely state that the "numerous representations have already been detailed in [various pleadings filed in the district court]". Parties are not permitted to adopt previously filed legal and factual arguments. *See* ***Yohey v. Collins***, 985 F.2d 222, 224-25

(5th Cir. 1993) (citing Fed. R. App. P. 28(a)(4)). Because the Torgersons have failed to provide any legal or factual analysis for this ground, it is waived. *See* ***United States v. Green***, 964 F.2d 365, 371 (5th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 984 (1993).

C.

The Torgersons contend that Butts was ineffective because he refused to accept the district court's offer to grant a continuance of the sentencing hearing when Butts was surprised by the "Miller letter". Their briefs contain no description of this letter or its contents,[2] and offer no explanation for why they were prejudiced by Butts' failure to accept the offer. They merely assert that they were entitled to an evidentiary hearing on this ground because the "Miller letter" had a substantial effect on the sentencing judge, and because they presented a letter to the district court which contradicted the "Miller letter".

Our court held in their direct appeal that "[t]he existence of [the Miller letter] does not demonstrate that the [district] court was `influenced by impermissible motives or incorrect information'". Accordingly, the Torgersons' have failed again to demonstrate prejudice. *See* ***Hill***, 474 U.S. at 59. Because the record is adequate to dispose of this ground, an evidentiary hearing was not required.

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[2] Our opinion for the Torgersons' direct appeal indicates that the "Miller letter" was written by Miller Leasing, one of the two victims of the Torgersons' scheme.

D.

The Torgersons maintain that Butts was ineffective because he failed to present "numerous other sentencing alternatives available to the Torgersons" as detailed in their § 2255 motion. Once again, because they failed to provide any legal or factual analysis of this ground, it is waived. *See* ***Green***, 964 F.2d at 371.

E.

The Torgersons contend that Butts was ineffective because he did not present "numerous character evidence" at the sentencing hearing. They do not identify that evidence, nor do they explain how it would have affected their sentences. In any event, such tactical decisions do not rise to the level of constitutional violations. *See* ***United States v. Hughes***, 635 F.2d 449, 453 (5th Cir. 1981). There was no need for an evidentiary hearing on this ground.

F.

Finally, Barbara Torgerson contends that Butts was ineffective for failing to allege that she was incompetent when she pleaded guilty. She apparently contends that she is entitled to an evidentiary hearing because Butts should have filed additional medical records, and states that some of those records were sent directly by her doctor to the district judge.

On direct appeal, our court held that the district court thoroughly and completely evaluated the Torgersons' capacity to plead guilty and their understanding of the charges against them. The medical records Mrs. Torgerson relies on, in support of her

evidentiary hearing contention, consist of two test results and a hospital registration form. The form contains no relevant information, and the test results are recounted in other previously submitted medical records. Mrs. Torgerson has not shown prejudice; an evidentiary hearing was not necessary.

III.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.[3]

[3] The appellants' motion for oral argument is **DENIED** as moot.