

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8314
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JOSE L. CANTU,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(SA-91-CA-697 (SA-85-CR-329-9))

(April 4, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Following an unsuccessful appeal of his conviction for drug and racketeering offenses, Appellant Cantu seeks relief under § 2255 complaining of ineffective assistance of counsel at trial, specifically by failing to object to the introduction into evidence of certain ledgers, and by failing to see to it that Appellant's name was removed from the offense described in the indictment under

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Racketeering Act No. 26.² The district court found that Cantu failed to satisfy the prejudice prong of Strickland v. Washington, 466 U.S. 668 (1984). We agree and affirm.

Although he contends that counsel should have objected to the introduction into evidence of certain ledgers claiming that the ledgers were the only evidence leading to his conviction on the racketeering charges, Appellant fails to point out a legitimate basis for an objection to the admissibility of this evidence or a ground upon which it could have been suppressed. In the first place, the ledgers were not offered as proof of the matters asserted in them. While they contained names, dates, amounts of money and check marks indicating whether or not money had been paid, there was no evidence linking Appellant Cantu's name with these entries. He could not have been incriminated by them. Appellant refers in brief to his counsel's failure to object to exhibits identified as Exhibits 197-A through H, but these items are not part of the record before this Court so the matter cannot be considered. Appellant has simply failed to show any prejudice to himself flowing from the ledgers.

The district court had ordered that Appellant's name be removed from Racketeering Act No. 26 alleged in the indictment and defense counsel did indeed fail to see that this occurred. Appellant has not given us any basis upon which to find that this

² Appellant also alleges claims of insufficiency of evidence and violation of his rights under the Confrontation Clause. We do not consider these claims because they were not raised in the district court. Beck v. Lynaugh, 842 F.2d 759, 762 (5th Cir. 1988).

oversight, in light of all of the other evidence considered by the jury, prejudiced his defense in any way. We agree with the district court that he is not entitled to relief because of this oversight. Lockhart v. Fretwell, 113 S.Ct. 838, 844 (1993); United States v. Fuller, 769 F.2d 1095, 1097 (5th Cir. 1985).

AFFIRMED.