

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9105
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PAMELA JIMISON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:92-CV-0060-E (4:88-CR-099-E))

(November 23, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellant Pamela Jimison was sentenced to nine years imprisonment and other penalties for her participation in a large-scale conspiracy to violate the drug laws. In due course, she filed a § 2255 petition asserting claims for ineffective assistance of trial and appellate counsel, misapplication of the Sentencing Guidelines and juror misconduct. On appeal, she also contends that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court mishandled her habeas petition. These claims have no merit, and we affirm the judgment of the district court denying relief.

Several complaints about trial counsel's handling of her case are combined in her ineffectiveness claim. First, Jimison argues that trial counsel pressured her not to testify at trial. The district court found factually that he advised Jimison of her right to testify on several occasions and each time, she declined to do so. At sentencing, she expressed no complaints about her trial counsel's services. Jimison persuaded neither the district court nor this court that her decision not to testify was involuntary.

Jimison next argues that counsel failed to introduce allegedly exculpatory evidence at trial. The trial court found that counsel's advice in this regard reflected a sound strategic decision. The government had produced tape recordings directly implicating Jimison in Maddox's drug dealing, and trial counsel feared that if some of Jimison's evidence were introduced, the tape recordings would also go into evidence. As it was, the recording was kept out of evidence. Counsel's decision rested well within the broad discretion afforded to competent trial counsel.

Jimison complains that her trial counsel did not effectively cross-examine a government witness Officer Mike DeLaFlor. Based on the record and the district court's conclusion, Jimison has not carried her burden of showing a constitutional level of incompetence.

Finally, Jimison alleges that her attorney's effectiveness was compromised by "conflicts of interest" with regard to the judge, the prosecutor, and witness DeLaFlor. Jimison's allegations do not prove or even imply, however, that her counsel succumbed to ethical conflicts while representing Jimison.

With regard to her appellate counsel, Jimison complains that counsel was ineffective for failing to protest the two-level increase to her offense level for obstruction of justice, juror misconduct on voir dire, ineffective assistance of trial counsel, and denial of a mistrial after severance of a co-defendant's case. As Jimison would not have prevailed on any of these issues on appeal, counsel's failure to assert them could not have prejudiced her.

In particular, her complaint about the two-level increase for obstruction of justice is misplaced. The district court had ample reason to believe that she had lied on the stand and in so doing engaged in conduct for which an increased offense level was appropriate. U.S. Sentencing Guidelines § 3C1.1.

With regard to juror misconduct on voir dire, Jimison complains that juror Yolanda Thomas falsely said she had never attended one of co-defendant Maddox's night clubs, while juror Moore falsely denied that she had known Maddox personally for years. Even if Jimison's assertions are well taken, they do not prove that either of these jurors were necessarily biased against Jimison at trial. The Supreme Court has held that to prevail on her claim, Jimison was required first to demonstrate that a juror

failed honestly to answer a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause. McDonough Power Equip. Inc. v. Greenwood, 464 U.S. 548, 556, 104 S.Ct. 845 (1984). Our research does not disclose authority for the proposition that prior knowledge or association with a person connected to the case creates a per se challenge for cause. See Andrews v. Collins, 21 F.3d 612, 619-21 (5th Cir. 1994). Thus, Jimison failed to meet the second part of the McDonough test.

Finally, because the trial court properly instructed the jury, after co-defendant Bell was severed, to disregard any evidence that pertained to Bell, the court dispelled any prejudice that could have occurred to Jimison.

Jimison alleges that the district court mishandled her habeas petition by failing to hold an evidentiary hearing, by failing to recuse for bias and prejudice, and by failing to appoint counsel. None of these contentions has any merit.

For the foregoing reasons, the judgment of the district court denying relief is AFFIRMED.