

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10148  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HECTOR HUERTA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:93-CV-203 (5:89-CR-41)  
- - - - -  
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Hector Huerta argues that the district court erred by enhancing his sentence pursuant to the provisions of 18 U.S.C. § 924(e)(1). He contends that he had only two of the requisite three previous felony convictions under § 924(e)(1) because he received two of his prior convictions on the same day, and those convictions were consolidated for purposes of sentencing.

Relief under § 2255, however, is reserved for transgressions of constitutional rights and for a narrow range of injuries that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice. United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

Nonconstitutional claims that could have been raised on direct appeal, but were not, may not be asserted in a collateral proceeding. Id.

Huerta's claim is not of constitutional dimension and could have been raised on direct appeal. See id. Huerta's claim is not cognizable under the limited scope of relief available under § 2255.

Huerta further argues that he received ineffective assistance of counsel because his attorney failed to prepare adequately for argument against application of the enhanced penalty provisions of 18 U.S.C. § 924(e)(1). Although the district court failed to address Huerta's ineffective-assistance-of-counsel claim, a remand is unnecessary as the record is sufficient for this Court to address the issue.

To prevail on an ineffective-assistance-of-counsel claim, a defendant must establish that counsel's performance fell below an objective standard of reasonable competence and that he was prejudiced by his counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Judicial scrutiny of counsel's performance must be highly deferential, and courts must make every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id. at 689.

Courts must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and a defendant must overcome the presumption that the challenged action might be considered sound trial strategy. Id.

Huerta has failed to establish that his counsel's performance fell below an objective standard of reasonable competence. Huerta admitted in his § 2255 motion that his attorney objected to the applicability of 18 U.S.C. § 924(e)(1) at the sentencing hearing. He also acknowledged in his brief that his attorney objected to the application of 18 U.S.C. § 924(e)(1) upon the basis that Huerta's three previous felony convictions were not "violent," and because one of the prior convictions had been set aside.

Further, this Court has held that multiple convictions arising from the same judicial proceeding but separate criminal transactions constitute multiple convictions for purposes of 18 U.S.C. § 924(e). United States v. Herbert, 860 F.2d 620, 622 (5th Cir. 1988), cert. denied, 490 U.S. 1070 (1989); see also United States v. Wallace, 889 F.2d 580, 584 (5th Cir. 1989), cert. denied, 497 U.S. 1006 (1990). Huerta's counsel was not required to present a meritless argument to the district court.

Huerta's counsel did not act "outside the wide range of professionally competent assistance." Strickland, 466 U.S. at 690. Because Huerta has failed to meet the first requirement of the two-prong test in Strickland, this Court need not reach the

issue of prejudice. See Lincecum v. Collins, 958 F.2d 1271, 1278 (5th Cir.), cert. denied, 113 S. Ct. 417 (1992).

Huerta has also filed a motion for appointment of counsel. A movant seeking post-conviction relief, however, has no constitutional right to appointed counsel. Pennsylvania v. Finley, 481 U.S. 551, 555, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987). The issues raised by Huerta are not complex, and his pro se brief adequately highlights them; the motion for appointment of counsel is DENIED. See Schwander v. Blackburn, 750 F.2d 494, 502 (5th Cir. 1985).

AFFIRMED.