

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-10310
Summary Calendar

United States of America,

Plaintiff-Appellee,

VERSUS

Jimmie Lloyd Pope,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas

(3:93-CV-559-D(3:87-CR-139-D))

(November 30, 1994)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:*

In May 1987, Jimmie Lloyd Pope was indicted, inter alia, for aiding and abetting the distribution of cocaine. In April 1988, Pope pled guilty to that indictment. The plea agreement signed by Pope and the United States, however, said that Pope would be pleading guilty to the substantive offense of distribution of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

cocaine. The district court accepted the plea agreement and sentenced Pope. Pope did not directly appeal his sentence.

In March 1993, Pope moved to vacate his sentence pursuant to 28 U.S.C. § 2255. He alleged that he was convicted of distribution of cocaine when the indictment charged him only with aiding and abetting such distribution, and that his counsel was ineffective for not raising this issue at sentencing. In November 1993, the magistrate judge recommended that Pope's motion be denied. In March 1994, the district court adopted the magistrate judge's findings and conclusions.

We have reviewed the parties' briefs and relevant portions of the record, and we agree with the district court that the magistrate judge below correctly recommended that Pope's motion be denied. The differing language in the plea agreement and the indictment is irrelevant because the acts of distributing cocaine and aiding and abetting the distribution of cocaine are not separate or different offenses. Federal law ascribes the same level of culpability to both. 18 U.S.C. § 2. We have recognized this concept in our case law, holding that "an aider and abettor charge is implicit in all indictments for substantive offenses, so it need not be specifically pleaded for an aiding and abetting conviction to be returned." United States v. Sabatino, 943 F.2d 94, 99-100 (1st Cir. 1991) (citing United States v. Pearson, 667 F.2d 12, 13 (5th Cir., Unit B, 1982)).

AFFIRMED.