

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11033
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIM D. HUGHES,

Defendant-Appellant.

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

(3:94 CV 468 (3:92 CR 216 H))

June 28, 1995

Before POLITZ, Chief Judge, HIGGINBOTHAM and EMILIO M. GARZA,
Circuit Judges.

PER CURIAM:*

Jim D. Hughes appeals the denial of his 28 U.S.C. § 2255
motion to correct, vacate or set aside his conspiracy conviction.
Finding no error, we affirm.

*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that this opinion should not be published.

Background

Hughes, an attorney, was indicted on 17 counts in connection with his involvement in a scheme to defraud Southwest Savings and Loan Association, a financial institution in Abilene, Texas insured by the Federal Savings and Loan Insurance Corporation.¹ In February 1993 Hughes pled guilty to one count charging violation of 18 U.S.C. § 371 through his conspiracy to commit bank fraud and to defraud the United States by impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service. Hughes was sentenced to 21 months of confinement. He did not appeal but moved under former Federal Rule of Criminal Procedure 35(b) to reduce his sentence contending, inter alia, that his sentence was disproportionate to that of his coconspirators. The motion was denied and we affirmed.²

Hughes then filed the instant motion, contending that he had pled guilty to a misdemeanor rather than to a felony and therefore his sentence exceeded the maximum punishment allowed by law. Finding that Hughes had not shown cause for raising the issue for the first time in this collateral proceeding³ and that he had not demonstrated a fundamental miscarriage of justice, the magistrate judge recommended rejection of the motion. The district court agreed; Hughes timely appealed.

¹The indictment charged Hughes with violations of 18 U.S.C. §§ 371; 215; 657; 1006; 1344; 2; and 26 U.S.C. § 7201.

²**United States v. Hughes**, No. 93-1615 (5th Cir. March 14, 1994) (unpublished).

³See **United States v. Frady**, 456 U.S. 152 (1982).

Analysis

We review factual findings under the clearly erroneous standard; questions of law are reviewed de novo. A petitioner may not raise an error for the first time on collateral review--even though a fundamental constitutional error is alleged--without showing both cause for the procedural default and actual prejudice resulting from the error.⁴ The instant § 2255 motion contains the initial complaint that Hughes's sentence exceeded the statutory maximum for the offense of conviction. In his attempt to explain the deficiency, Hughes asserts that both he and his trial attorney were ignorant of the relevant tax laws. Ignorance of the law, however, is insufficient to establish cause.⁵ Hughes does not point to any objective external factors which prevented him from previously raising the issue.⁶ The district court properly determined that he has not met his burden of showing cause.⁷

Moreover, Hughes has not demonstrated that the alleged error

⁴**Frady; United States v. Shaid**, 937 F.2d 228 (5th Cir. 1991)(en banc), cert. denied, 502 U.S. 1076 (1992).

⁵See United States v. Flores, 981 F.2d 231 (5th Cir. 1993)(rejecting § 2255 petitioner's attempt to establish cause for failing to raise claims in initial motion because he did not previously appreciate the legal significance of facts); **Saahir v. Collins**, 956 F.2d 115 (5th Cir. 1992)(rejecting pro se § 2254 petitioner's attempt to show cause for failure to raise issue in prior petition through claimed ignorance of the law). See also Engle v. Issac, 456 U.S. 107 (1982)(finding no cause for procedural default in trial counsel's unawareness of a constitutional objection).

⁶See Flores.

⁷Because Hughes did not demonstrate cause, it is unnecessary to consider whether there was a showing of prejudice. **Frady**.

"probably resulted in the conviction of one who is actually innocent," such that the narrow exception to the cause and prejudice test is warranted.⁸ Hughes pled guilty to one count of violating 18 U.S.C. § 371 which charged him with conspiring to commit bank fraud and to defraud the Internal Revenue Service. Our examination of the language of the indictment, the plea agreement and attachments, and the sentencing hearing persuades us that Hughes's argument that he pled guilty only to the misdemeanor charge of filing a fraudulent tax return is totally without merit. Nor do we find any merit in his argument that the underlying substantive bank fraud violations could not apply to him because he was not an officer or director of the financial institution at the time of the admitted criminal acts. The record is devoid of any evidence suggesting that Hughes was probably innocent of the offense of conviction. The dismissal of Hughes's § 2255 motion was proper.

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

⁸**Shaid**, 937 F.2d at 232 (quoting **Murray v. Carrier**, 477 U.S. 478, 496 (1986)).