

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11093
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DONALD MACK MARTIN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CR-105-F
- - - - -

June 28, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Donald Mack Martin contends that he received ineffective assistance from retained counsel at a suppression hearing and was thus fatally hamstrung in litigating the suppression issue. He also asserts that due to counsel's ineffective assistance, he unknowingly waived the right to appeal the district court's denial of the motion to suppress. Martin, who pleaded guilty, moved unsuccessfully, once pro se and once through appointed

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

counsel, to withdraw his guilty plea due to the alleged ineffective assistance.

Only when the record is sufficiently developed will this court resolve a claim of ineffective assistance on direct appeal. United States v. Rosalez-Orozco, 8 F.3d 198, 199 (5th Cir. 1993). The record is not sufficiently developed. As the record stands, the court "can only speculate on the basis" for defense counsel's decisions regarding the suppression hearing. See United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988). Because the only details regarding counsel's effectiveness are in the allegations contained in the motions to withdraw Martin's guilty plea, we cannot address the issue at this time. See United States v. Bounds, 943 F.2d 541, 544 (5th Cir. 1991), cert. denied, 114 S. Ct. 135 (1993).

A Rule 32(d) hearing was not conducted regarding the motions to withdraw Martin's guilty plea, the Government did not specifically respond to the allegations contained in those motions, and the district court made no factual findings in that regard. Thus, we AFFIRM, without prejudice to Martin's right to challenge the effectiveness of counsel in a § 2255 motion. See United States v. Bermea, 30 F.3d 1539, 1573 n.4 (5th Cir. 1994), cert. denied, 115 S. Ct. 1113 (1995), and cert. denied, 115 S. Ct. 1825 (1995).

AFFIRMED.