IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20427
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EUGENIO BALDERAS, JR.,

Defendant-Appellant.

Appeal from the United States District Court for
the Southern District of Texas
(CA H-94-1541(CR-H-0301-1))

(May 24, 1995)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Eugenio Balderas, Jr. was convicted by jury trial of conspiracy to travel in and use interstate commerce facilities in the commission of murder for hire, aiding and abetting the commission of murder for hire, perjury before a federal grand jury, solicitation of murder for hire, and use of a firearm during the commission of murder for hire. He was sentenced to a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

360-month term of imprisonment, a five-year period of supervised release, and a $250 special assessment. This court affirmed Balderas's conviction and sentence. United States v. Razo-Leora, 961 F.2d 1140 (5th Cir. 1992).

Balderas filed a 28 U.S.C. §2255 motion alleging that: 1) he should be resentenced because his retained counsel failed to attend the sentencing hearing; 2) his counsel was ineffective for failing to communicate a plea offer to him; and 3) the district court erred in attributing to him for sentencing purposes a leadership role pursuant to U.S.S.G. §3B1.1 and in failing to grant him a downward departure for his minor role in the offense pursuant to §3B1.2. The district court dismissed the motion. Balderas appeals the dismissal. We affirm.

Balderas's claims that the district court erred in attributing to him for sentencing purposes a leadership role and that the district court erred in failing to grant him a downward adjustment for his minor role in the offense are non-constitutional claims which could have been raised on direct appeal and are not cognizable under §2255. See United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981); United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

Balderas's claim that he should be resentenced because his retained counsel failed to attend the sentencing hearing is a claim of constitutional magnitude and therefore not procedurally barred in a §2255 motion. Balderas's must still show "cause" for failing to raise the error on direct appeal and "actual

prejudice." United States v. Frady, 102 S.Ct. 1584, 1594 (1982). Balderas has not shown cause for not raising the error. The record reveals that he was represented by one of his attorneys at the sentencing hearing, albeit not the lead defense attorney, but one does not have an absolute right to counsel of one's choice. Gandy v. Alabama, 569 F.2d 1318, 1323 (5th Cir. 1978). The attorney at sentencing was the co-counsel at trial and signed many of the motions and pleadings relating to the sentencing. This attorney made 21 objections to the Presentence Report and filed a sentencing memorandum. Therefore, he was well versed in Balderas's case and active at sentencing. Balderas was not prejudiced.

Balderas's claim that his counsel was ineffective for failing to communicate to him a plea offer is also a claim of constitutional magnitude. Under §2255, Balderas is not entitled to a hearing "on claims based on unsupported generalizations." United States v. Fishel, 747 F.2d 271, 273 (5th Cir. 1984). Balderas must provide detailed and specific facts with respect to his allegations. United States v. Smith, 915 F.2d 959, 964 (5th Cir. 1990); Davis v. Butler, 825 F.2d 892, 894 (5th Cir. 1987). Balderas provides no specifics regarding the alleged plea offer. He alleges that he could have received a reduced sentence for cooperation. He does not indicate how he could have cooperated or how he learned of the alleged plea offer. He merely makes a "vague and conclusory" allegation that will not raise the issue. United States v. Pineda, 988 F.2d 22, 23 (5th Cir. 1993).

AFFIRMED.