

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20539
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

MOHAMMAD AHMAD HAMMAD,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-94-2336;CR-H-90-305-2)

(April 11, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Mohammad Ahmad Hammad appeals the district court's summary dismissal of his motion to vacate, set aside, or correct his sentence. We **AFFIRM**.

I.

Hammad and others were charged in a 20-count indictment with conspiracy (count 1), and aiding and abetting in connection with the unauthorized use of access devices (counts 2-20). After the presentation of evidence, Hammad moved for a judgment of acquittal

¹ 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

on all counts, which was granted in part. He was convicted and sentenced on the remaining eight counts. Hammad's conviction and sentence were affirmed. **United States v. Hammad**, No. 92-2326 (5th Cir. May 11, 1993).

Hammad sought to have his sentence vacated, set aside, or corrected pursuant to 28 U.S.C. § 2255. After considering the motion along with the record of the criminal proceeding, the district court concluded that Hammad was not entitled to relief. Accordingly, and pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings, the court dismissed summarily Hammad's motion.

II.

"This Court consistently requires district courts to state findings and conclusions for their rulings on motions to vacate sentence filed under 28 U.S.C. § 2255." **United States v. Daly**, 823 F.2d 871, 872 (5th Cir. 1987). Such findings are normally "indispensable to appellate review." **Id.** (quoting **Hart v. United States**, 565 F.2d 360, 362 (5th Cir. 1978)). "[U]nless the record conclusively shows that the petitioner is entitled to no relief, the district court must set out his findings of fact and conclusions of law when ruling on a § 2255 motion." **United States v. Edwards**, 711 F.2d 633, 633 (5th Cir. 1983). As hereinafter discussed, our review of the record reflects that Hammad is entitled to no relief; and, thus, the district court properly dismissed his motion.

Hammad received a sentence of 60 months for the conspiracy count and a concurrent sentence of 71 months for the seven aiding and abetting counts.² Hammad contends that his trial counsel rendered ineffective assistance by failing to proffer mitigating evidence that would have caused the district court either to sentence him at the lower end of the applicable sentencing range, or to depart downward outside that range. Specifically, he claims his trial counsel knew that he was a paid informant for the FBI, that he was a "mole" in a Palestinian terrorist organization operating in the United States, and that he helped to thwart several terrorists plots, including the bombing of the federal building in Houston, Texas, the assassination of an Israeli prime minister, and the bombing of the El Al airline terminal in New York.

The two well known components for an ineffective assistance of counsel claim are deficient performance, and prejudice. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The prejudice prong focuses on whether the allegedly deficient performance renders the results unreliable or the proceedings fundamentally unfair. As the Supreme Court noted recently,

an analysis focussing solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective. To set aside a conviction or sentence solely because the outcome would have been different but for counsel's error

² Based on the Sentencing Guidelines, Hammad received an offense level of 23 and a criminal history category of III; the applicable guideline range was 57 to 71 months.

may grant the defendant a windfall to which the law does not entitle him.

Lockhart v. Fretwell, ___ U.S. ___, ___, 113 S. Ct. 838, 842-43 (1993). Moreover, for prejudice in the sentencing context, a petitioner must show "a reasonable probability that but for trial counsel's [alleged] errors the defendant's non-capital sentence would have been *significantly* less harsh." **United States v. Segler**, 37 F.3d 1131, 1136 (5th Cir. 1994) (quoting **Spriggs v. Collins**, 993 F.2d 85, 88 (5th Cir. 1993)).

The constitutional right to effective assistance of counsel "is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated." **Fretwell**, ___ U.S. at ___, 113 S. Ct. at 842. "Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him." **Id.** at ___, 113 S. Ct. at 844.

Hammad does not claim a deprivation of a substantive or procedural right to which the law entitles him. The sentence that the district court imposed was within the guideline range; it was legal. **United States v. Miro**, 29 F.3d 194, 198-99 (5th Cir. 1994) ("a claim on appeal that a sentencing judge refused to depart from the Guidelines and imposed a lawful sentence provides no ground for relief"); **United States v. Rojas**, 868 F.2d 1409, 1410 (5th Cir. 1989) (same). Accordingly, Hammad has failed to claim any

prejudice resulting from the alleged ineffective assistance of counsel.

III.

For the foregoing reasons, we

AFFIRM.