UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-20855
Summary Calendar

UNITED STATES OF AMERICA,

Defendant-Appellee,

versus

PURVIS RAY CARTWRIGHT,

Plaintiff-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-91-0179; CA-H-94-3178)

(June 15, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:[1]

Cartwright appeals the district court's dismissal of his § 2255 petition. We affirm.

I.

A jury found Purvis Ray Cartwright and his son guilty of drug trafficking offenses. The district court sentenced Cartwright to 293 months' imprisonment, five years' supervised release, and a special assessment of $100. Cartwright appealed and this court affirmed in United States v. Cartwright, 6 F.3d 294 (5th Cir.

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1993), cert. denied, 115 S. Ct. 671 (1994). Cartwright filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The district court denied the motion summarily, and Cartwright filed a timely notice of appeal.

II.

We review the district court's dismissal of Cartwright's § 2255 motion for abuse of discretion. United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992). The district court may summarily dismiss a § 2255 motion if "it plainly appears from the face of the motion . . . that the movant is not entitled to relief . . . ." § 2255 Rule 4(b).

Cartwright maintains that his presentence report (PSR) contained self-incriminating statements that he had divulged under a grant of immunity, in violation of the Fifth Amendment and U.S.S.G. § 1B1.8.[2] Cartwright essentially concedes that the district court sentenced him within the correct guideline range, but argues that the court chose the most severe sentence within that range because the court was prejudiced by his immunized admissions. He also contends that this information prejudiced him in his direct appeal.

Even if Cartwright is correct that his PSR should not have included the immunized information, United States v. Abanatha, 999

[2]Cartwright's § 1B1.8 argument is not properly before the court because "[t]he district court's technical application of the Guidelines does not give rise to a constitutional issue cognizable under § 2255." United States v. Segler, 37 F.3d 1131, 1134 (5th Cir. 1994). However, if we were to reach this claim, we would conclude that it is meritless for the reasons given below.

F.2d 1246, 1249 (8th Cir. 1993), cert. denied, 114 S.Ct. 1549 (1994), our careful review of the record shows that Cartwright was not harmed by it. The PSR calculated Cartwright's guideline range expressly excluding the immunized information. When the district court sentenced Cartwright at the top of this range, it explained that it did so because Cartwright was more culpable than his son and had abused his son's trust by engaging in criminal activity with him. The district court also declined the PSR's suggestion to depart upward based on Cartwright's criminal history, which the court could have done if it was prejudiced against him. We conclude that the district court did not abuse its discretion in dismissing Cartwright's motion because Cartwright was plainly not entitled to relief. Cf. id. at 1249-50.

Cartwright also raises a number of new issues that he did not include in his § 2255 petition in the district court.[3] Because they were not raised below, we decline to address them. United States v. Madkins, 14 F.3d 277, 279 n.12 (5th Cir. 1994); United States v. Cates, 952 F.2d 149, 152 (5th Cir.), cert. denied, 504 U.S. 962 (1992). Further, many of these are not constitutional or

[3]These issues are whether: 1) the trial court erred in giving a deliberate ignorance jury instruction; 2) the court failed to make written findings on the disputed facts in the PSR; 3) the court improperly participated in the plea bargain process and spoke *ex parte* with the government; 4) counsel was ineffective in failing to investigate and locate defense witnesses; 5) counsel was ineffective in failing to object when the government introduced an oral admission by Cartwright and implied that Cartwright had made a written admission; 6) the court erred by admitting Cartwright's statement and by not informing the jury that the statement was not in writing; and 7) the government suppressed the statement until one day before trial.

jurisdictional issues cognizable under § 2255. We would not revisit the jury instruction issue in any event, because we already decided it adversely to Cartwright in his direct appeal. United States v. Kalish, 780 F.2d 506 (5th Cir.), cert. denied, 476 U.S. 1118 (1986). Lastly, we note that Cartwright's appeal does not assert his claim that counsel was ineffective for failing to object to the immunized information in the PSR; this argument is therefore abandoned. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

For the above reasons, the district court's dismissal is AFFIRMED.