

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30467
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEPHEN R. HANSEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA 94 1028 (CR 90 409 M))

(March 28, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

After being charged with 29 counts of illegal activity, Stephen R. Hansen pled guilty to one count each of racketeering activity and tax evasion, freely admitting his guilt to the district court. The court sentenced him to concurrent sentences with a maximum 78 months imprisonment, plus over \$5,000,000

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

restitution. This court affirmed Hansen's sentence on direct appeal in July 1992.

Hansen has now filed a section 2255 motion alleging his counsel was constitutionally ineffective and that violations of Rule 11 and the double jeopardy clause permeated his conviction. The government pleaded procedural bar, i.e. that Hansen may not raise on collateral attack substantive issues which he could have appealed directly, in the absence of cause and actual prejudice. United States v. Shaid, 937 F.2d 228, 232 (5th Cir. 1991) (en banc), cert. denied, 112 S. Ct. 978 (1992). The district court rejected all three elements of Hansen's petition, and we affirm.

First, there was plainly no need to conduct an evidentiary hearing, because the record of the original proceedings is complete, and it conclusively contradicts Hansen's vague contentions. United States v. Smith, 915 F.2d 959, 964 (5th Cir. 1990).

Second, there is no basis for Hansen's assertions that his attorney rendered constitutionally ineffective assistance. It was Hansen's burden to show both deficient professional conduct and prejudice. "Prejudice" means that in the context of the guilty plea, that but for counsel's ineffectiveness, Hansen would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366 (1985). This is the measure of prejudice in such a case, and Hansen has not fulfilled it.

Third, because he cannot show constitutionally ineffective assistance of counsel, Hansen cannot avoid the procedural bar that prevents us from considering his Rule 11 and double jeopardy contentions in habeas. Hansen has not proven "cause" that would explain why he did not raise these issues before his § 2255 motion. Hansen raised not even a fact issue concerning whether his attorney was deficient for "allowing" him to plead guilty and for not raising a double jeopardy question. Hansen freely conceded his guilt more than once during the Rule 11 colloquy, and the double jeopardy claim was, at best, a weak issue. See Shaid, 937 F.2d at 232. Habeas review of these issues was properly barred by the trial court.

For these reasons, we **AFFIRM** the district court's judgment.