IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40175
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSKAR BENEVIDEZ VANN,

Defendant-Appellant.

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Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:93-CR-60012-01

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(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

A grand jury indicted Oskar Benevidez Vann for conspiring to violate the Arms Export Control Act. Vann moved for an expedited court determination as to whether he has been denied and will be denied the effective assistance of counsel as the result of an alleged threat made by the prosecution to defense counsel David Charles Willard. The district court summarily denied the motion. Vann filed a notice of appeal.

This Court has jurisdiction to review only "final decisions" of the district court. 28 U.S.C. § 1291. In criminal cases, the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

so-called "final judgment rule" usually prohibits appellate review until conviction and imposition of sentence. Flanagan v. United States, 465 U.S. 259, 263, 104 S. Ct. 1051, 79 L. Ed. 2d 288 (1984). The collateral order exception to the final judgment rule, however, permits appeal of an interlocutory order if the district court's ruling (1) conclusively determines the disputed question, (2) resolves an important issue that is completely separate from the merits, and (3) cannot effectively be reviewed on appeal from a final judgment. Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949).

The order at issue here does not fall within the collateral order exception. First, the court's order does not conclusively determine the disputed question. The order indicates that the motion is denied "at this time." This language implies that Vann could re-urge the motion at some later point. Second, a claim of ineffective assistance of counsel normally requires a showing of deficient performance and prejudice. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Neither the performance nor the prejudice component of the Strickland test is completely separate from the merits of the case. Finally, claims of ineffective assistance are fully reviewable following entry of final judgment, either on direct appeal in limited circumstances, see United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988), or in a motion pursuant to 28 U.S.C. § 2255. See United States v. McCaskey, 9 F.3d 368, 380-81 (5th Cir.), cert. denied,

114 S. Ct. 1565 (1994). Accordingly, we lack jurisdiction to review the district court's order.

DISMISSED.