

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40502

Summary Calendar

SUNIL JAMES,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals
(A40 345 875)

(November 7, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Sunil James seeks review of a decision by the Board of Immigration Appeals affirming an immigration judge's order of deportation. We find no error in the decision below and accordingly affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

Sunil James, a native and citizen of India, was admitted to the United States in 1987. On September 15, 1993, he was convicted of delivery of a controlled substance. In subsequent deportation proceedings, an immigration judge (IJ) found James deportable pursuant to 8 U.S.C. §§ 1251(a)(2)(B)(i), 1251(a)(2)(A)(iii). The Board of Immigration Appeals affirmed.

II.

James claims that he did not knowingly waive his statutory right to counsel at the deportation hearing, because he mistakenly thought that the proceeding was only preliminary. We find James' claim without merit.

The record reflects that the IJ explained to James the nature and purpose of the deportation hearing, informed him of his rights, including his right to counsel, and asked him if he understood his rights. The IJ also indicated that she would postpone the proceedings so that James could retain or consult with an attorney. James, however, indicated that he understood his rights and declined the invitation to seek representation. There is no indication in the record that this waiver was anything but knowing.

In any event, James was not prejudiced by absence of counsel. James admitted at the hearing that he was convicted of delivery of a controlled substance. Moreover, the government introduced James' record of conviction. James, however, argues that failure to have counsel at the deportation hearing was harmful because counsel would have notified the court that James has filed a petition for

writ of habeas corpus challenging his conviction. This argument is unavailing. A post-conviction attack, without more, does not negate the finality of a criminal conviction for deportation purposes. Martinez-Montoya v. INS, 904 F.2d 1018, 1025 (5th Cir. 1990); Okabe v. INS, 671 F.2d 863, 865 (5th Cir. 1982). For purposes of the deportation hearing, James' conviction was final.

AFFIRMED.