

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-40880

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DEBORAH RICHARDSON BOUNDS,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Western District of Louisiana  
(M-91-CV-2233(88-CR-50038-1))

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January 18, 1996

Before HIGGINBOTHAM and DUHÉ, Circuit Judges, and SCHWARZER,\*  
District Judge.

PER CURIAM.\*\*

Defendant pleaded guilty to conspiracy to manufacture phenyl acetone and amphetamine. After an unsuccessful appeal, she moved to vacate her sentence and conviction under 28 U.S.C. §2255 for violations of Rule 11 of the Federal Rules of Criminal Procedure and for ineffective assistance of counsel. To maintain a claim of

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\* District Judge of the Northern District of California, sitting by designation.

\*\* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Rule 11 error raised by a § 2255 motion, the mover must show cause why the claim could not have been raised on direct appeal and that if condoned a miscarriage of justice will result. United States v. Shaid, 937 F.2d 228 (5th Cir. 1991)(en banc). Defendant has not done so except to the extent she claims she received ineffective assistance of counsel.

Defendant claims she received ineffective assistance of counsel because her attorney did not raise the Rule 11 claim on appeal. A claim that appellate counsel's performance was ineffective must pass the Strickland<sup>1</sup> test: (1) counsel's performance was so deficient as to fall below objectively reasonable conduct of appellate counsel and (2) prejudice. Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994). Appellate counsel is not required to raise every non-frivolous ground that might be pressed on appeal. Ellis v. Lynaugh, 873 F.2d 830, 840 (5th Cir. 1989). Defendant has not satisfied either of the Strickland requirements and has not shown that the Rule 11 violation could not have been raised on direct appeal. Her § 2255 motion was properly dismissed.

AFFIRMED.

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1 Strickland v. Washington, 466 U.S. 668 (1984).

