

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50008
Summary Calendar

UNITED STATES OF AMERICA, Plaintiff-Appellee,

versus

VICKI ROBINSON, Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(W-93-CA-220(W-89-CR-76(2)))

(November 1, 1994)

Before, SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

Per curiam:¹

Appellant, Vicki Robinson (Robinson), *pro se*, filed a motion under 28 U.S.C. § 2255 attacking her federal conviction and sentence on various grounds. We find it necessary to remand this case to the district court for the entry of findings of fact and conclusions of law on appellant's claim of ineffective assistance of counsel. We affirm the district court's denial of appellant's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

motion on all other grounds.

FACTS

On April 9, 1990, Robinson pleaded guilty to aiding and abetting the distribution of crack cocaine in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. She was sentenced to 170 months imprisonment, five years supervised release, a \$15,000 fine, and a \$50 special assessment fee. This Court affirmed her conviction and sentence on direct appeal.

On June 17, 1993, Robinson filed this motion, which the district court denied without making specific findings and conclusions. Robinson appealed and this Court remanded on June 3, 1994, for determination whether the notice of appeal was timely delivered to prison officials. On remand, the district court determined that Robinson's notice of appeal was timely.

DISCUSSION

In her § 2255 motion, Robinson alleged, without factual detail: (1) improper enhancement of base offense level based on leadership role, (2) improper enhancement of base offense level based on criminal history, (3) illegal detention and denial of pretrial bail, (4) improper assessment of the \$15,000 fine, (5) insufficiency of evidence to support her conviction, (6) involuntary guilty plea, and (7) ineffective assistance of counsel. The district court denied Robinson's § 2255 motion without an evidentiary hearing and failed to provide specific reasons for such denial, stating only, "Movant's motion lacks merit and should be denied. Movant lists seven conclusory grounds which

lack an arguable basis in law or fact for the relief sought."

Robinson's *pro se* appellate brief is primarily composed of copies of pleadings contained in the trial record and other documents; however, she does include several pages of vague argument pertaining to the grounds for relief listed in her § 2255 motion.

Issues raised and disposed of in a previous appeal from an original judgment of conviction cannot be considered in § 2255 motions. *U.S. v. Kalish*, 780 F.2d 506, 508 (5th Cir.), *cert. denied*, 476 U.S. 118 (1986). On direct appeal, Robinson raised the allegation that her offense level was improper due to enhancement for her leadership role, and this issue was rejected. This Court need not address this allegation again. *See Kalish*, 780 F.2d at 508.

Relief under § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and, if condoned, would result in a complete miscarriage of justice. *United States v. Vaughn*, 955 F.2d 367, 368 (5th Cir. 1992). A district court's technical application of the sentencing guidelines is not of constitutional dimension and thus not cognizable in a § 2255 motion. *Id.* Accordingly, this Court will not address Robinson's contentions that the district court improperly determined her applicable offense level based on her criminal history. *See id.*

This Court will not address Robinson's allegations of illegal pretrial detention and denial of bail because that claim is moot.

See Powers v. Schwartz, 587 F.2d 783, 783-84 (5th Cir. 1979).

A nonconstitutional claim that could have been raised on direct appeal, but was not, may not be raised in a collateral proceeding. *See Vaughn*, 955 F.2d at 368. Improper assessment of Robinson's fine is a noncognizable issue because it is a nonconstitutional argument that could have been raised in her direct appeal. *See id.*

Robinson's assertion that there was insufficient evidence to support her conviction is not valid in light of her guilty plea. Accordingly, this argument should be liberally construed as a challenge to the sufficiency of the factual basis of her guilty plea. This Court will not address Robinson's inadequate-factual-basis argument because she raised this challenge on direct appeal and it was rejected. *See Kalish*, 780 F.2d at 508.

If the district court does not assign reasons for denying a § 2255 motion, this Court is effectively precluded from reviewing the denial on those issues that would entitle the movant to relief under § 2255, if proved. *Hart v. United States*, 565 F.2d 360, 362 (5th Cir. 1978). This Court consistently requires district courts to provide findings and conclusions for their rulings on § 2255 motions. *United States v. Daly*, 823 F.2d 871, 872 (5th Cir. 1987). Such findings are necessary for appellate review unless the record conclusively shows that the movant is entitled to no relief. *United States v. Edwards*, 711 F.2d 633, 633 (5th Cir. 1983).

Robinson contends that her guilty plea was involuntary, apparently based on the argument that she was coerced and did not

understand the consequences of her plea.

Statements made in open court when a guilty plea is entered "carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics" is inadequate to challenge such declarations. *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977). In her arraignment proceeding, Robinson stated that she pleaded guilty freely and voluntarily and was not threatened, forced, or coerced. Robinson alleged no specific facts to support her claim of an involuntary guilty plea. Robinson's allegations are inadequate to challenge her arraignment statements. See *Blackledge*, 431 U.S. at 74. The record conclusively shows that Robinson is not entitled to relief under § 2255 on this issue, relieving the district court of its obligation to present findings and conclusions. See *Edwards*, 711 F.2d at 633.

Because an ineffective assistance of counsel claim cannot generally be resolved on direct appeal, a motion under § 2255 is the proper procedural vehicle for such claims. See *United States v. Pierce*, 959 F.2d 1297, 1301 (5th Cir.), cert. denied, 113 S. Ct. 621 (1992). To obtain § 2255 relief based on ineffective assistance of counsel, a defendant must show not only that his attorney's performance was deficient, but that the deficiencies prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *United States v. Smith*, 915 F.2d 959, 963 (5th Cir. 1990). A claim may be rejected due to an insufficient showing of prejudice, without assessing the

adequacy of counsel's performance. *United States v. Fuller*, 769 F.2d 1095, 1097 (5th Cir. 1985).

Robinson contends that she received ineffective assistance of counsel because her attorneys failed to raise the issues cited in her § 2255 motion, denying her constitutional rights and violating procedural and substantive due process. If true, these allegations could arguably satisfy the *Strickland* test of deficient performance and prejudice. Although Robinson's allegations do not appear likely to succeed, the record does not conclusively show that Robinson would not be entitled to relief, thus relieving the district court from making specific findings and conclusions. See *Edwards*, 711 F.2d at 633.

CONCLUSION

The district court's denial is REVERSED and REMANDED as to the ineffective assistance of counsel claim for the limited purpose of the entry of findings of fact and conclusions of law. The district court's denial is AFFIRMED as to all other allegations.