UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-50056
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROY MARION JONES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(A-93-CV-3830JN(A-72-CR-22))

(August 23, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:[1]

Roy Marion Jones challenges the district court's denial of his § 2255 petition. We affirm.

I.

In 1978, Jones pled guilty to one count of importing marijuana in violation of 21 U.S.C. §§ 952 and 960, and to one count of forgery of a pilot certificate in violation of 49 U.S.C. § 1472(b).

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

An enhancement information that Jones had been convicted in 1972 for aiding and abetting the possession with intent to distribute marijuana was filed in the case. As a result, Jones was sentenced to eight years imprisonment for the drug count to be served concurrently with a three-year sentence for the forgery count.

Jones has challenged the 1978 sentence on several occasions. First, he filed a motion for reduction of sentence under Fed. R. Civ. P. 35 in May 1979, asserting that the sentence was unduly harsh. The district court denied the motion. Second, Jones filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 in October 1980. Jones asserted that his counsel had been ineffective in negotiating the 1978 plea agreement. The district court denied the motion. Third, Jones filed a petition for a writ of error coram nobis in February 1992. In his petition, Jones asserted that the enhancement based on his 1972 conviction was improper (although on different grounds than those asserted in his current petition) and that his counsel was ineffective for not objecting to the enhancement. The district court construed this as a § 2255 motion and denied it. We affirmed.

In this proceeding, Jones filed a petition for a writ of error coram nobis challenging the 1972 conviction. Jones asserted that the 1972 conviction was invalid because no transcript was made of the proceedings, and therefore, there was no evidence that his guilty plea was knowing and voluntary. Jones also asserted that the 1972 conviction should not have been used to enhance his sentence because the government did not prove that his earlier plea had been knowing and voluntary.

In her report and recommendation, the magistrate judge recommended that Jones's § 2255 motion be denied. The district court adopted the magistrate judge's report and recommendation and dismissed the petition with prejudice.

II.

A.

On appeal, Jones argues that at the Rule 11 hearing on his 1972 guilty plea, the court did not inform him that he was waiving his right against self-incrimination, his right to a trial by jury, and his right to confront his accusers.[2] Relief under 28 U.S.C. § 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 would, if condoned, result in a complete miscarriage of justice. **See United States v. Capua**, 656 F.2d 1033, 1037 (5th Cir. 1981). Nonconstitutional claims that could have been raised on direct appeal, but were not, may not be raised in a collateral proceeding. **See id.**

Jones seeks relief on a simple Rule 11 violation that does not assert a constitutional deprivation. This is not cognizable under § 2255 because it is neither a constitutional nor a jurisdictional deficiency. **See United States v. Prince**, 868 F.2d 1379, 1385 (5th Cir.), **cert. denied**, 493 U.S. 932 (1989). Further, Jones has not

[2] In his petition, Jones asserted a Rule 11 violation and urged that relief should be granted because there was no transcript of his plea proceeding. The government produced the transcript and eliminated the "silent record" argument. **See McChesney v. Henderson**, 482 F.2d 1101, 1106 (5th Cir. 1973), **cert. denied**, 414 U.S. 1146 (1974). In his reply, Jones changed his issues to those now addressed.

demonstrated that the alleged error resulted in a complete miscarriage of justice or a proceeding inconsistent with the rudimentary demands of fair procedure. **See United States v. Timmreck**, 441 U.S. 780, 784 (1979). Finally, Jones does not argue that he was unaware of the consequences of his guilty plea, but rather argues that he was not advised of those consequences when his plea was accepted. **See United States v. Stumpf**, 900 F.2d 842, 845 (5th Cir. 1990). Therefore, we agree with the district court that Jones's claim is not cognizable under § 2255.[3]

B.

Jones argues for the first time on appeal that his counsel in 1972 was ineffective for failing to tell him that he had a right to appeal. In the district court, Jones argued only that the court did not advise him of this right. We review issues raised for the first time on appeal only if they are plain and involve purely legal questions and the failure to address them would result in manifest injustice. **See Self v. Blackburn**, 751 F.2d 789, 793 (5th Cir. 1989). Whether counsel advised Jones to appeal his conviction, and if not, whether counsel should have done so, is not

[3] Jones also argues that the district court erred in dismissing his claim because he waited 20 years to bring the challenge. Although the district court stated that Jones had not shown good cause for failing to bring the claim sooner, this finding was not a prerequisite to the district court's dismissal; the district court made the statement after concluding that Jones had not alleged a constitutional violation.

a purely legal question. We therefore decline to consider this issue for the first time on appeal.[4]

C.

Finally, Jones challenges the district court's denial of a number of motions, including his motion for default judgment and his motion for extension of time to respond to the government's brief. The district court did not err in denying these motions.

AFFIRMED.

[4] Jones also asserts that his counsel in 1978 was ineffective because he did not challenge the enhancement based on the 1972 conviction. This assertion is not relevant to a challenge to the 1972 conviction.