

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50513
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDDIE LOUIS PLEASANT,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-94-CA-126
(W-91-CR-116(1))
- - - - -
(December 12, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Eddie Louis Pleasant's motion to proceed in forma pauperis (IFP) on appeal is DENIED. This Court may authorize Pleasant to proceed IFP on appeal if he is economically eligible and the appeal is not frivolous. Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986). Pleasant has established that he is economically eligible to proceed IFP on appeal.

Pleasant argues that his counsel was ineffective because he allowed Pleasant to plead guilty without investigating the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

validity of Pleasant's prior convictions which were relied upon to enhance his sentence under 18 U.S.C. § 924(e).

In reviewing a district court's decision under § 2255, this Court reviews the findings of fact under the clearly erroneous standard and questions of law de novo. United States v. Faubion, 19 F.3d 226, 228 (5th Cir. 1994). A district court's conclusions regarding an ineffective assistance of counsel claim "are mixed questions of law and fact and, thus, also subject to de novo review." Id.

To prevail on his ineffective-assistance-of-counsel claim, Pleasant must establish that 1) his attorney's representation fell below an objective standard of reasonableness; and 2) there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). In the context of a guilty plea, to satisfy the second prong of the Strickland test, the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985).

Judicial scrutiny of counsel's performance must be highly deferential, and courts must make every effort "to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. Courts must indulge a strong presumption that counsel's conduct

falls within the wide range of reasonable professional assistance, and a defendant must overcome the presumption that the challenged action might be considered sound trial strategy. Id.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Nelson v. Hargett, 989 F.2d 847, 850 (5th Cir. 1993) (citation omitted). "A defendant who alleges a failure to investigate on the part of his counsel must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the [proceeding]." Id. (citation omitted). In a guilty plea context, whether counsel's failure to investigate prejudiced the defendant will depend on the likelihood that the discovery of further information would have led counsel to change his recommendation as to the plea. Hill, 474 U.S. at 59; Young v. Lynaugh, 821 F.2d 1133, 1140 (5th Cir.), cert. denied, 484 U.S. 986 (1987).

A person who is found to be a convicted felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) is subject to an enhanced penalty if the person "has three previous convictions by any court . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another." 18 U.S.C. § 924(e)(1). Pleasant does not dispute that he was convicted of attempted murder in 1980 and in 1985. Pleasant has not demonstrated that his counsel provided ineffective assistance. Pleasant does not allege that he advised counsel of his belief that his prior 1955 and 1961 convictions

were invalidly obtained and that counsel ignored the issue. Pleasant acknowledged all four of the prior convictions offenses during his rearraignment without any reservations. Pleasant has not demonstrated that his counsel acted unreasonably in failing to investigate the validity of Pleasant's counseled guilty plea convictions that occurred over thirty years prior to Pleasant's commission of the instant offense.

Further, Pleasant has not demonstrated that he was prejudiced by counsel's failure to investigate the validity of his prior convictions. Pleasant has not alleged the existence of any specific evidence that counsel could have discovered, other than Pleasant's own self-serving assertions, that would have demonstrated that Pleasant did not commit the robberies in 1955 and 1961, or that his guilty pleas to those offenses were involuntarily entered. Pleasant has not demonstrated that there was information available which would have caused counsel to change his guilty plea recommendation. Pleasant's ineffective-assistance-of-counsel claim does not raise a nonfrivolous appellate issue.

Pleasant also argues that the district court's reliance on two invalid convictions for sentencing enhancement purposes resulted in a violation of due process. Title 18 § 924(e) does not permit a defendant to collaterally attack the constitutionality of his prior convictions used to enhance his sentence unless the defendant was totally deprived of the assistance of counsel during the prior proceedings. See United States v. Custis, ___ U.S. ___, 114 S. Ct. 1732, 1738-39, 128 L.

Ed. 2d 517 (1994). Pleasant acknowledges that he was represented by counsel during his prior criminal proceedings. This argument does not raise a nonfrivolous issue on appeal.

Pleasant argues that the district court abused its discretion in failing to conduct an evidentiary hearing on his motion. "To receive a federal evidentiary hearing, the burden is on the habeas corpus petitioner to allege facts, which, if proved, would entitle him to relief." Ellis v. Lynaugh, 873 F.2d 830, 840 (5th Cir.), cert. denied, 493 U.S. 970 (1989). An evidentiary hearing is not required if the record is complete or the petitioner raised only legal claims that can be resolved without the presentation of additional evidence. Id. As discussed, Pleasant has not demonstrated that he can produce specific evidence that would demonstrate that he is entitled to habeas relief. Thus, the district court did not err in failing to conduct an evidentiary hearing.

As Pleasant has failed to raise a nonfrivolous issue, his motion to proceed IFP is DENIED and the appeal is DISMISSED. See 5th Cir. R. 42.2.