

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-50748
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

LISTON RANDOLPH POSEY, II,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(W 93 CR 84)

August 30, 1995

Before HIGGINBOTHAM, DUHÉ, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Appellant Posey was convicted of drug and firearms offenses and appeals. We find his appeal frivolous and dismiss it.

Posey complains first that the district court erred in not allowing him to testify concerning his religious beliefs and their relationship to drug use. He acknowledges that use of drugs as part of a religious practice is not constitutionally privileged. United States v. Spears, 443 F.2d 895, 896 (5th Cir. 1971), cert.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 404 U.S. 1020 (1972); United States v. Hudson, 431 F.2d 468, 469 (5th Cir. 1970), cert. denied, 400 U.S. 1011 (1971).

He then makes allegations of "police and prosecutorial misconduct" which he admits are also precluded by well settled law.

Finally Appellant contends that the district court erred when it determined that he was competent to stand trial without holding a hearing. This argument is likewise frivolous. There was no motion pending before the court requiring it to hold such a hearing and Appellant does not allege that he had any specific evidence showing that he was mentally incompetent which he would have presented at a hearing if one had been conducted. In fact, the court had before it only the evidence of the court-appointed medical expert to the effect that Posey was competent, and counsel's statement to the court that he had no doubts about his client's competence to stand trial. This imposed no obligation on the court to sua sponte conduct a competency hearing.

This appeal is patently frivolous. Court-appointed counsel is reminded that not only has he no duty to bring frivolous appeals but that he has an obligation not to do so. United States v. Burleson, 22 F.3d 93, 95 (5th Cir.), cert. denied, 115 S.Ct. 283 (1994). The procedures outlined by the Supreme Court in Anders v. California, 386 U.S. 738 (1967) should have been utilized.

APPEAL DISMISSED.