

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50802
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

IVORY RUTH GEIGER,

Defendant-Appellant.

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Appeal from the United States District Court
for the Western District of Texas
USDC Nos. W-94-CA-306
W-88-CR-126

- - - - -
June 29, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Ivory Ruth Geiger pleaded guilty to distribution of crack cocaine within 1000 feet of an elementary school, in violation of 21 U.S.C. §§ 841(a)(1) and 845a. United States v. Geiger, 891 F.2d 512, 513 (5th Cir. 1989), cert. denied, 494 U.S. 1087 (1990). The district court upwardly departed from the guidelines and sentenced Geiger to 120 months of imprisonment. Id. This court affirmed that sentence on direct appeal. Id. at 513-14.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Geiger filed three motions under 28 U.S.C. § 2255 prior to filing the present § 2255 motion. Following an order to show cause why this fourth petition should not be dismissed under Rule 9(b) of the Rules Governing § 2255 Proceedings and Geiger's response, the district court dismissed her § 2255 motion.

Under Rule 9(b), a § 2255 motion may be dismissed if the district court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits, or if new and different grounds are alleged, the district court finds that the failure to assert those grounds in a prior motion constituted an abuse of the procedure. If a movant can show cause for failing to raise the new claims earlier, and prejudice from the alleged errors, the motion is not subject to dismissal. United States v. Flores, 981 F.2d 231, 235 (5th Cir. 1993). This court applies the cause-and-prejudice test of McCleskey v. Zant, 499 U.S. 467, 493 (1991) (petition for habeas corpus under 28 U.S.C. § 2254), to § 2255 motions. Flores, 981 F.2d at 234-35. A district court's dismissal under Rule 9(b) is reviewed for abuse of discretion. Id. at 235.

Geiger asserted that her failure to raise her new ground for relief in her prior § 2255 motions should have been excused because she was acting pro se and was ignorant of the law. A movant's pro se status does not amount to "cause" under the cause-and-prejudice test. Flores, 981 F.2d at 236. Geiger also has not shown that a failure to hear her claims would result in a fundamental miscarriage of justice. See id. The district court did not abuse its discretion in dismissing Geiger's motion.

Geiger is warned that filing frivolous actions in the future will result in the imposition of sanctions.

AFFIRMED.