

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50819
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-CV-220(W-89-CR-76))

(May 3, 1995)

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

PER CURIAM:*

Vicki Robinson appeals the denial of relief in her 28 U.S.C. § 2255 motion to vacate, set aside, or correct her sentence. Finding no error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Robinson pleaded guilty to aiding and abetting the distribution of crack cocaine and was sentenced to 170 months' imprisonment. We affirmed her conviction and sentence on direct appeal. Robinson filed a pro se § 2255 motion raising numerous issues. The district court denied the motion without an evidentiary hearing and without specific findings. We affirmed the denial on all claims except ineffective assistance of counsel, which was remanded for the limited purpose of entry of findings of fact and conclusions of law. On remand, the district court analyzed all reasons cited in Robinson's § 2255 motion for ineffective assistance of counsel, determined that the claim was without merit, and denied § 2255 relief.

II.

Robinson complains that the district court erred in finding no basis for her ineffective-assistance-of-counsel claim. To prevail on such a claim, a defendant must show that counsel's performance was deficient and that this performance prejudiced the defense so as to deprive her of a fair trial. Strickland v. Washington, 466 U.S. 668, 697 (1984).

In her § 2255 motion, Robinson raised several allegations of ineffective assistance of counsel: (1) She had three different attorneys during the proceedings, causing miscommunication and lack of consistency; (2) none of her attorneys complained about denial of bond, involuntary guilty plea, or denial of substantive and

procedural due process and other constitutional rights; (3) her attorneys failed to present "Exhibit B," her rejection of a plea agreement; and (4) her attorneys failed to raise many issues cited in her § 2255 motion.

On remand, the district court determined that (1) any miscommunication caused by the retention of three different attorneys had no effect on Robinson's guilty plea or conviction; (2) any complaint about the denial of bond was moot; (3) her guilty plea was previously considered and determined to be voluntary; (4) her allegations concerning substantive and procedural due process violations were conclusional and raised nothing to address; (5) she failed to attach "Exhibit B" and, thus, raised nothing to be addressed; and (6) the remaining issues cited in her § 2255 motion were without merit, and any attempt to raise them would have been futile.

Robinson's pleadings on her ineffective assistance claim are quite brief. In her first allegation concerning miscommunication, Robinson failed to show either deficient performance or prejudice to her defense to support her allegation. See Washington, 466 U.S. at 697. The district court did not err.

Robinson's allegation concerning the issue of denial of bond was moot. See Powers v. Schwartz, 587 F.2d 783, 783-84 (5th Cir. 1979). Thus, the district court was correct in concluding that Robinson's counsel was not ineffective for failing to raise the issue.

This court previously determined that Robinson's guilty plea

was voluntary. This finding was binding on the district court on remand. See Chevron U.S.A., Inc. v. Traillour Oil Co., 987 F.2d 1138, 1150 (5th Cir. 1993). The district court did not err in concluding to be meritless Robinson's allegation that counsel was ineffective for failing to raise this issue.

Conclusional allegations are insufficient to show a constitutional violation. Koch v. Puckett, 907 F.2d 524, 530 (5th Cir. 1990) (§ 2254 petition). In her motion, Robinson alleged only that counsel failed to raise "issues of violations of due process both procedural and substantive along with violations of constitutional rights." Robinson failed to plead specific facts relating to the alleged violations. The district court did not err in determining that Robinson's conclusional allegation was insufficient to show a constitutional violation.

Although Robinson pleaded that her attorneys failed to present "Exhibit B," she failed to attach the exhibit to her motion and failed to plead specific facts upon which the district court could determine the merits of her allegation. See Koch, 907 F.2d at 530. The district court did not err in denying relief on this allegation.

Robinson's allegation that "[c]ounsel[sic] failed to bring up many issues cited in this § 2255" is also conclusional. The district court analyzed the merits of each issue, determined each to be without merit and, thus, determined Robinson's allegations of ineffective assistance of counsel for failure to raise the issue to be meritless. Robinson failed to plead facts specific to this

allegation to raise a constitutional violation. See Koch, 907 F.2d at 530. The district court did not err in denying § 2255 relief based upon Robinson's ineffective assistance claim.

III.

Robinson complains that she should have been allowed an evidentiary hearing on remand. The district court must conduct an evidentiary hearing on a § 2255 motion unless the record conclusively shows that the movant is entitled to no relief. United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992). If the allegations in the § 2255 motion are negated by the record, the district court need not hold an evidentiary hearing. See United States v. Briggs, 939 F.2d 222, 228 (5th Cir. 1991), cert. denied, 113 S. Ct. 1016 (1993). A hearing is unnecessary if the allegations are inconsistent with the movant's behavior and the movant does not offer detailed and specific facts to support her allegations. United States v. Smith, 915 F.2d 959, 964 (5th Cir. 1990). This court reviews the denial of an evidentiary hearing for abuse of discretion. Bartholomew, 974 F.2d at 41.

Robinson made only unsubstantiated, conclusional allegations respecting her allegedly deficient counsel. Because the record conclusively negates Robinson's contentions, the district court did not abuse its discretion in refusing to hold an evidentiary hearing.

IV.

Robinson raises two issues that this court addressed in the previous § 2255 proceeding: (1) Her guilty plea was involuntary, and (2) her pretrial confinement was illegal. "The 'law of the case' doctrine generally precludes the reexamination of issues decided on appeal, either by the district court on remand or by the appellate court itself on a subsequent appeal. If an issue was decided on appeal))either expressly or by necessary implication))the determination will be binding on remand and on any subsequent appeal." Chevron U.S.A., Inc., 987 F.2d at 1150 (citation omitted). Because this court affirmed the denial of § 2255 relief on these two issues, this determination was binding on remand, and reexamination is precluded.

V.

Robinson raises issues that did not appear in the original § 2255 motion or the subsequent appeal and were not raised before the district court on remand: (1) whether the district court erred in not having the presentence report corrected; (2) whether the district court erred in accepting a guilty plea on a charge that did not legally exist; and (3) whether the district court erred in enhancing Robinson's sentence for offenses involving "cocaine base." "[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). The

district court may not consider additional claims beyond the scope of remand. See Daly v. Sprague, 742 F.2d 896, 900 (5th Cir. 1984). The court's failure to consider the new issues raised in this appeal does not result in manifest injustice, as Robinson could have raised the issues in her original § 2255 motion and because they were outside the scope of the remand.

AFFIRMED.