

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60092
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEVEN DONALD KNEZEK,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-90-257
- - - - -

(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

This court does not consider issues not raised in the district court. "[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). Knezek's new grounds for his ineffectiveness claim therefore are not subject to review.

To prevail on his claim of ineffective assistance of counsel, Knezek must show (1) that his counsel's performance was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

deficient in that it fell below an objective standard of reasonableness; and (2) that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687-94 (1984). The district court determined that Knezek's attorneys' representation did not fall below an objective standard of reasonableness. The district court conducted a hearing in which Knezek's attorneys testified that Knezek did not tell them that Customs agents questioned him at gunpoint or that he was otherwise "manhandled." Each testified that Knezek denied making the statements that Customs agents attributed to him. The district court determined that "no reasonable attorney would have filed a motion to suppress based on the information given to him or her by Knezek," Knezek has not established that his attorneys' representation was deficient. Because he fails to show that his attorneys' performances fell below an objective standard of reasonableness, Knezek's ineffectiveness claim is meritless. See Strickland, 466 U.S. at 688.

Knezek alleged that the "cause" for his failure to raise the coercion issue in his direct appeal was his attorneys' ineffectiveness. Because his ineffectiveness claim is without merit, Knezek cannot establish the "cause" that would excuse his failure to raise the coercion issue in his direct appeal and allow him to raise it in a § 2255 motion. See United States v. Shaid, 937 F.2d 228, 232 (5th Cir. 1991)(en banc), cert. denied, 112 S. Ct. 978 (1992).

Knezek's appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir.

1983). Because this appeal is frivolous, it is DISMISSED. See
5th Cir. R. 42.2.