

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60236
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELVIN RONNELL WADE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. CA-93-575 (CRJ-00096)
- - - - -
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Melvin Ronnell Wade is not entitled to relief under 28 U.S.C. § 2255 based on his attorney's allegedly ineffective challenge to the search warrant. On direct appeal, we determined that the warrant was supported by probable cause and that there had been no violation of Wade's rights under the Fourth Amendment. United States v. Lewis, 902 F.2d 1176, 1180 (5th Cir. 1990).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

To obtain § 2255 relief based on ineffective assistance of counsel, a defendant must show not only that his attorney's performance was deficient, but that the deficiencies prejudiced the defense. United States v. Smith, 915 F.2d 959, 963 (5th Cir. 1990). A claim may be rejected because of an insufficient showing of prejudice, without assessing the adequacy of counsel's performance. United States v. Fuller, 769 F.2d 1095, 1097 (5th Cir. 1985).

Wade has not demonstrated that he was prejudiced by the fact that the bedroom slippers which contained cocaine were not introduced into evidence. Fuller, 769 F.2d at 1097 (5th Cir. 1985). We decline to consider Wade's argument that the bedroom slippers constituted exculpatory evidence withheld by the prosecution because he did not raise this issue in the district court. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

Counsel was not ineffective for failing to argue that the evidence was insufficient to establish a conspiracy. On direct appeal, we determined that the evidence was sufficient to support Wade's conviction for conspiracy. Lewis, 902 F.2d at 1180-81.

AFFIRMED.