

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

---

No. 94-60650

(Summary Calendar)

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODOLFO GONZALEZ-LIRA

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Southern District of Texas  
(CA-C90-107 (CR-C-90-107))

---

(July 12, 1995)

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

PER CURIAM:\*

Rodolfo Gonzalez-Lira ("Gonzalez") appeals the district court's denial of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (1988). We affirm.

I

A border patrol agent stopped Gonzalez at a checkpoint in Falfurrias, Texas. Gonzalez, who was crossing from Mexico into Texas, was driving a truck loaded with lettuce. The agent noticed

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

an irregularity on Gonzalez' bill of lading and observed that the lettuce boxes had not been carefully stacked. The agent questioned Gonzalez about his load, at which time the agent detected alcohol on Gonzalez' breath. Gonzalez' answers to the agent's questions were not helpful, and the agent instructed Gonzalez to move his truck into the area at the checkpoint reserved for secondary searches. Two agents, accompanied by a "sniffer" dog, searched the truck and found bundles of marijuana hidden under the boxes of lettuce.

Gonzalez was convicted of possessing with the intent to distribute 1,693 kilograms of marijuana, and was sentenced to 182 months in prison and ten years of supervised release. Gonzalez appealed on evidentiary grounds, and we affirmed his conviction. In a § 2255 motion, Gonzalez claimed prejudice from the district court's admitting evidence that (1) his truck had been seized in connection with an unrelated drug crime, and (2) he had associated with a convicted drug smuggler. Gonzalez also claimed that the Government had knowingly used perjured testimony to obtain a conviction, and that his trial counsel's assistance was ineffective. The district court denied his § 2255 motion, and Gonzalez appeals that denial. On appeal, Gonzalez raises only issues that he had incorporated into his ineffective assistance claim.<sup>1</sup>

## II

---

<sup>1</sup> Issues not raised on appeal are abandoned. *See Evans v. City of Marlin, Texas*, 986 F.2d 104, 106 n.1 (5th Cir. 1993).

We review the factual findings supporting the district court's denial of a § 2255 motion for clear error, but we review the court's legal determinations de novo. *United States v. Gipson*, 985 F.2d 212 (5th Cir. 1993).

A

Gonzalez contends that the district court's sentence was improper because the court violated Rule 32 of the Federal Rules of Criminal Procedure by refusing to allow him to correct factual errors in his pre-sentence report ("PSR"). Gonzalez did not raise this issue on direct appeal. Generally, violations of Rule 32 do not constitute grounds for § 2255 relief if they could have been raised on direct appeal. *United States v. Perez*, 952 F.2d 908, 910 (5th Cir. 1992). While we do have "the power to correct a Rule 32 violation on collateral attack if the § 2255 Movant can demonstrate that the error could not have been brought to the court's attention earlier," *United States v. Bartholomew*, 974 F.2d 39, 43 (5th Cir. 1992), Gonzalez does not offer an explanation for not raising the issue on direct appeal. Thus, the district court properly denied Gonzalez' Rule 32 claim.

B

Gonzalez next contends that he received ineffective assistance of counsel because his counsel failed to object to the factual errors in his PSR.<sup>2</sup> To prevail on a claim of ineffective

---

<sup>2</sup> Gonzalez also argues that counsel failed to request an offense level adjustment based on section 3B1.1 of the Sentencing Guidelines, see United States Sentencing Commission Guidelines Manual § 3B1.1 (1990). However, section 3B1.1 provides only for offense level increases. U.S.S.G. § 3b1.1 comment. (stating that "[t]his section provides a range of adjustments

assistance of counsel, Gonzalez must show that (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced his defense. *United States v. Segler*, 37 F.3d 1131, 1136 (5th Cir. 1994) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984)). A failure to establish either deficient performance or prejudice defeats an ineffective assistance claim. *Strickland*, 466 U.S. at 697. Thus, Gonzalez must show that "there is a reasonable probability that but for trial counsel's errors the defendant's non-capital sentence would have been significantly less harsh." *Spriggs v. Collins*, 993 F.2d 85, 88 (5th Cir. 1993). Because Gonzalez does not indicate how counsel's failure to object to the alleged errors in the PSR prejudiced him, the district court properly rejected his ineffective assistance claim.<sup>3</sup>

C

Lastly, Gonzalez contends that before it denied his § 2255 motion, the district court should have held an evidentiary hearing on his ineffective assistance claim, his Rule 32 claim, and a claim that medication he was taking during trial "rendered him incompetent at sentencing or at trial." We review a district

---

to increase the offense level"). Therefore, Gonzalez was not prejudiced by counsel's alleged omission.

<sup>3</sup> Gonzalez similarly fails to show how counsel's failure to request an offense level adjustment under section 3B1.1 of the Sentencing Guidelines prejudiced him. Thus, even if we were to construe Gonzalez' section 3B1.1 argument as a claim that counsel should have requested an offense level decrease under another Sentencing Guidelines provision, his claim still fails.

court's failure to hold an evidentiary hearing on a § 2255 motion for abuse of discretion. *Bartholomew*, 974 F.2d at 41. A district court may deny a § 2255 motion without conducting an evidentiary hearing "if the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief." *Id.* A hearing is also unnecessary if the allegations are inconsistent with the movant's conduct and the movant does not offer detailed and specific facts to support his allegations. *United States v. Smith*, 915 F.2d 959, 964 (5th Cir. 1990).

We have already held that the motion, files, and records of the case conclusively show that Gonzalez is entitled to no relief on his Rule 32 and ineffective assistance claims, so we consider only whether the district court should have held an evidentiary hearing on his incompetency claim. Gonzalez offers no specific facts supporting his allegation that pills he was taking during trial rendered him incompetent to stand trial. When the Government asked Gonzalez at trial whether the medication he was taking "might be one of the reasons that you appear to be a little on the subdued side here today," Gonzalez responded: "No. The pills))I just take them. This is the way I am all the time." The record shows that Gonzalez was able to testify coherently on his behalf at trial, and provides no evidence of incompetence. Because Gonzalez does not support his claim with specific allegations of fact, and because his allegation of incompetence is inconsistent with his conduct at trial, we conclude that the district court did not abuse its discretion in failing to hold an evidentiary hearing on Gonzalez'

incompetency claim.

III

For the foregoing reasons, we AFFIRM the district court's denial of Gonzalez' § 2255 motion.