

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-41219  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

ROBERT CHARLES BORKERT,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-94-CV-286  
- - - - -

February 20, 1998

Before JOLLY, BENAVIDES and PARKER, Circuit Judges.

PER CURIAM:\*

Robert Charles Borkert, federal inmate #43568-079, appeals the denial of his 28 U.S.C. § 2255 motion. He argues that trial counsel rendered ineffective assistance due to a conflict of interest, stemming from the payment of legal fees by an unindicted coconspirator, which adversely affected counsel's performance, specifically, counsel's failure to advise Borkert about the disadvantages and benefits of a plea offer. We have carefully reviewed the record and the appellate arguments. In

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

light of the credibility determinations by the court of the testimony from Borkert and counsel, we conclude that the district court did not err in concluding that Borkert failed to establish an actual conflict of interest which adversely affected counsel's performance. See United States v. Placente, 81 F.3d 555, 558-59 (5th Cir. 1996).

AFFIRMED.