

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-11315
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN L. SULLIVAN,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Texas
USDC No. 3:96-CV-234-H (3:92-CR-402-H)

July 17, 1998

Before JOLLY, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

John L. Sullivan, federal prisoner # 23457-077, appeals the district court's denial of his 28 U.S.C. § 2255 motion. Sullivan argues that the district court erred in failing to conduct an evidentiary hearing to develop the factual issues raised with respect to his claims of ineffective assistance of counsel and that the district court erred in granting the government's motion to dismiss without ruling on his claims of ineffective assistance of counsel. He argues that his claims of ineffective assistance of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

counsel are cognizable in this § 2255 proceeding. He argues that the district court erred in focusing on his claim of improper application of the sentencing guidelines as the only issue. He argues that he should have received concurrent sentences, and he argues that if counsel had raised the issue in the district court, his sentence would have been different.

Sullivan cannot show prejudice due to his counsel's failure to raise the issue of concurrent sentencing with the sentencing court. United States v. Torrez, 40 F.3d 84, 88 n.2 (5th Cir. 1994); United States v. McCarthy, 77 F.3d 522 (1st Cir. 1996), cert. denied, 117 S.Ct. 771 (1997). Sullivan does not brief his issues relating to acceptance of responsibility on appeal, and so these issues are considered abandoned. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

A F F I R M E D.