

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-21088
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARKUS LEONARD REECE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CV-3399
USDC No. H-96-CR-74-1

August 31, 1999

Before JOLLY, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Marcus Leonard Reece requests this court to grant him a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion. Reece argues that his counsel was ineffective during plea bargaining and at sentencing.

A COA will issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

In reviewing a district court's denial of a § 2255 motion,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

this court examines the factual findings for clear error and conclusions of law de novo. United States v. Faubion, 19 F.3d 226, 228 (5th Cir. 1994). The district court must set out its findings of fact and conclusions of law when ruling on a § 2255 motion unless the record conclusively shows that a defendant is entitled to no relief. United States v. Daly, 823 F.2d 871, 872 (5th Cir. 1987).

Because the record does not conclusively show that Reece is entitled to no relief, the district court erred in failing to provide findings and conclusions in support of its denial of Reece's § 2255 motion. Therefore, COA is GRANTED, the district court's order is VACATED, and the case REMANDED for the preparation of findings and conclusions of law.

Because Reece has raised factual issues in connection with his claim, the district court should consider obtaining a response from the Government prior to preparing its findings and conclusions of law.

COA GRANTED, VACATED AND REMANDED.