

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-51204
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WALTER RUBIN MAY,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-99-CV-746-HG
USDC No. SA-95-CR-309-1

December 22, 2000

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Walter Rubin May, federal prisoner # 21686-077, has appealed the district court's denial of his 28 U.S.C. § 2255 motion to vacate. WE AFFIRM.

The district court granted a certificate of appealability (COA) on whether the court should have held an evidentiary hearing relative to May's two claims that his counsel's failure to present the testimony of three named persons at his sentencing hearing constituted ineffective assistance. This court holds that there

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

was no abuse of the district court's discretion in so ruling, substantially for the reasons stated by the district court in its COA order. United States v. May, No. SA-99-CV-746-HG (W.D. Tex. Jan. 7, 2000)(unpublished).

May contends that the district court erred by denying relief on his claims of (1) counsel ineffectiveness during the trial, (2) knowing use of perjured testimony by the Government, and (3) failure of the Government to provide favorable evidence to the defense. These rulings are not appealable, however, for lack of a COA relative to them. See United States v. Kimler, 150 F.3d 429, 431 n.1 (5th Cir. 1998).

May's pro se application for leave to file a supplemental brief is DENIED, because he is represented by counsel. See 5TH CIR. R. 28.7.

MOTION DENIED; JUDGMENT AFFIRMED.