

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-7136  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ROBERTO MONTEMAYOR,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-B-91-210(CR-B-87-538))

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(January 31, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

DUHÉ, Circuit Judge:<sup>1</sup>

Following denial of his motion to suppress, Appellant pled guilty to one count of a multi-count drug indictment charging him and others with engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848. Following sentencing he moved to vacate his sentence under § 2255. The district court denied relief without a hearing. Appellant claims that the court erred in not conducting a hearing on his claim of an inadequate factual basis for his plea, and on his numerous claims that his counsel was

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<sup>1</sup> Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

ineffective. We affirm.

A violation of § 848 requires that defendant act in concert with five or more persons in relation to whom defendant occupied the position of an organizer or manager. 21 U.S.C. § 848(c). Appellant contends that when he entered his plea he did not understand that the Government would have to prove that element to convict him. He further claims that the record does not in fact establish those facts. We disagree.

It is true that while the district court informed Appellant that conviction required the Government prove that he occupied the position of organizer or manager, it did not tell him that he must occupy that position vis-a-vis five or more other persons. The record as a whole, however, demonstrates that Appellant knew this and that this was the fact of the case. He admitted that there were more than five people involved in the several drug importations. He acknowledged that he was charged with occupying the position of organizer or manager or supervisor of more than five people. He recruited and supervised Javier Munoz as a driver. He dispatched Munoz, Isidoro Moreno and Jorge Munoz to an importation location to assist a crew already there in offloading a plane load of drugs. The record supports the clear inference that Major Cato operated a stash house for the drugs under Appellant's direction and supervision. It also supports the inference that crews consisting of several persons other than those specifically named engaged in offloading operations and were under the general supervision of Appellant.

Appellant argues that he could not be the supervisor because he was part of the Saldivar organization of which Saldivar was the supervisor. The law requires only that Appellant be a supervisor, not the supervisor. United States v. Carillo Barraza, 853 F.2d 288, 292 (5th Cir. 1988), cert. denied, 489 U.S. 1097 (1989).

Appellant next contends that his counsel was ineffective because he did not explain the elements of the crime to Appellant, promised that he could prevail in defending the claim then pressured Appellant to enter a plea, failed to prepare a defense and failed to recognize that there was no factual basis for the plea. Each of these claims is directly refuted by the sworn testimony given by Appellant at the plea hearing. His testimony at the hearing carries a strong presumption of truth. Blackledge v. Allison, 431 U.S. 63 (1977). He fails to meet the standard of Strickland v. Washington, 466 U.S. 668, 687 (1984).

Numerous additional issues of alleged ineffectiveness are raised by Appellant in his briefs to this court but were not raised in the district court. Consequently, we do not consider them. United States v. Cates, 952 F.2d 149, 152 (5th Cir.), cert. denied, 112 S.Ct. 2319 (1992).

AFFIRMED.