

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-11310
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPTEMBER 30, 2011 JOHN LEY CLERK

D.C. Docket Nos. 1:10-cv-21030-AJ; 1:06-cv-20592-AJ-4

MARIO BACHILLER,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(September 30, 2011)

Before TJOFLAT, CARNES and PRYOR, Circuit Judges.

PER CURIAM:

Mario Bachiller, a federal prisoner, appeals pro se the denial of his motion to vacate his sentence, 28 U.S.C. § 2255. In Ground 6 of his motion, Bachiller alleged that trial counsel was ineffective for failing to challenge a jury instruction to determine the quantity of drugs individually attributable to him and the other defendants at his trial on drug, robbery, and firearm charges. We granted a certificate of appealability on the following issue:

Whether the district court violated *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 1992), by failing to address Bachiller's claim that his counsel was ineffective for failing to request a jury instruction requiring the jury to make a threshold determination of the drug quantity attributable to each defendant.

In ground 6 of his motion to vacate, Bachiller fairly presented a claim that his counsel was ineffective for failing to request an instruction for the jury to make a threshold determination of the drug amount attributable to each defendant at his trial. The government concedes that the district court did not address this claim. We disagree with the contention of the government that Bachiller waived his argument by failing to raise it in his objections to the magistrate judge's report and recommendation. Accordingly, we vacate the order denying Bachiller's motion and remand with instructions to address the claim that he raised in ground 6.

VACATED AND REMANDED.