

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10182
Non-Argument Calendar

D.C. Docket Nos. 1:13-cv-20580-JAL; 1:10-cr-20219-JAL-5

RAFAEL POLANCO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(March 30, 2016)

Before TJOFLAT, JILL PRYOR, and EDMONDSON, Circuit Judges.

PER CURIAM:

Rafael Polanco, a federal prisoner, appeals the denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence.

The appeal presents this broad issue: Whether the district court erred in denying Mr. Polanco's claim that counsel provided ineffective assistance by incorrectly advising him that he could not both plead guilty and challenge the applicability of a six-level enhancement, U.S.S.G. § 2S1.1(b)(1), which led to his decision to go to trial?

To be more specific, the practical issue before this Court is whether Polanco was prejudiced when, as a result of trial counsel's supposed misadvice, Polanco proceeded to trial and forfeited the reduction for acceptance of responsibility he might have received had he pleaded guilty. Because Polanco did not show that, but for his trial counsel's allegedly deficient performance, a reasonable probability exists that he would have pleaded guilty and actually received a lower sentence, the district court did not err in denying the § 2255 motion.

Polanco was sentenced to a below-guidelines sentence. The sentencing court seemed to consider a variety of postulated events, including one in which Polanco would have gotten credit for assuming responsibility. Then, the sentencing court found that the sentence of 87 months was a reasonable and just sentence in the

light of the sentencing factors and of all the considered postulated propositions.

Accordingly, Polanco has not shown prejudice that would be required to be shown to get 2255 relief on a claim of ineffective assistance of counsel.

AFFIRMED.