

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-41059
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WALLACE MARTIN ALANIZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-94-CV-72
- - - - -

March 17, 1998

Before JOLLY, BENAVIDES and PARKER, Circuit Judges.

PER CURIAM:*

Wallace Martin Alaniz, federal prisoner #40990-079, appeals from the district court's denial of his motion filed pursuant to 28 U.S.C. § 2255. Alaniz argues that the prosecution withheld and suppressed mitigating evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). Alaniz further argues that his trial counsel was ineffective because he failed to pursue investigative leads that would have led to mitigating evidence. In the alternative, he contends that the district erred in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

failing to grant him an evidentiary hearing to evaluate newly discovered evidence.

Alaniz has failed to make a substantial showing that the allegedly withheld evidence denied him his constitutional right to a fair trial. See United States v. Holley, 23 F.3d 902, 914 (5th Cir. 1994). Similarly, Alaniz has failed to show that he was prejudiced by his trial counsel's failure to pursue the allegedly mitigating evidence. See Strickland v. Washington, 466 U.S. 668, 687, 697 (1963). The district court did not abuse its discretion in declining to hold an evidentiary hearing. See United States v. Cervantes, ___ F.3d ___, No. 96-10659, 1998 WL 7204, at *3-4 (5th Cir. Jan. 27, 1998).

AFFIRMED.