

June 21, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20513
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD DRAGON,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:01-CR-892-1

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Richard Dragon appeals his convictions for bankruptcy and mail fraud. He argues that his counsel's representation of him in connection with the aiding and abetting charges constituted a constructive denial of counsel under United States v. Cronin, 466 U.S. 648 (1984).

The general rule in this circuit is that a claim of ineffective assistance will not be considered on direct appeal "when, as here, it was not raised in the district court, because

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

there has been no opportunity to develop record evidence on the merits of the claim." United States v. Lampazianie, 251 F.3d 519, 527 (5th Cir. 2001); see also Massaro v. United States, 538 U.S. 500, 504-05 (2003). We conclude that a motion brought under 28 U.S.C. § 2255 would be preferable to direct appeal for deciding Dragon's Cronic claim. See Massaro, 538 U.S. at 504-05. The district court's judgment is therefore AFFIRMED without prejudice to Dragon's right to raise this claim in a 28 U.S.C. § 2255 motion.

AFFIRMED.