

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 95-40732  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MILLARD DEAN LOFTIS,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Eastern District of Texas  
(5:94-CV-76)

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April 23, 1996

Before POLITZ, Chief Judge, GARWOOD and STEWART, Circuit Judges.

PER CURIAM:\*

Millard Dean Loftis appeals the denial of his motion for relief under 28 U.S.C. § 2255, contending that he received ineffective assistance of counsel; the district court gave improper reasons and employed an incorrect analysis when departing upward from the applicable guideline sentencing range; the government did not notify him of its intention to seek an upward departure; and the district court denied him the right of allocution at sentencing. Our review of the record and briefs discloses no reversible error.

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

We will not consider the contentions of ineffective assistance of counsel which Loftis raises for the first time on appeal.<sup>1</sup> His contention that he was denied his right of allocution is not persuasive for it lacks a factual basis. His further contention that counsel was ineffective for failing to raise his fourth amendment contentions on direct appeal is likewise unconvincing; Loftis pleaded guilty and thus waived the suppression issues.<sup>2</sup> As to Loftis's remaining contentions, we affirm for essentially the facts found, authorities cited, and reasons given by the learned district judge.<sup>3</sup>

AFFIRMED.

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<sup>1</sup>**Varnado v. Lynaugh**, 920 F.2d 320 (5th Cir. 1991).

<sup>2</sup>**Smith v. Estelle**, 711 F.2d 677 (5th Cir. 1983), cert. denied, 466 U.S. 906 (1984).

<sup>3</sup>See **Loftis v. United States**, No. 5:94-CV-076 (E.D.Tex., Aug. 23, 1995) (unpublished order).