

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

No. 12-51291
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2013

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JEFFERY C. MCNEALY,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 3:11-CR-3015-1

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jeffery McNealy appeals his jury-trial conviction of receipt/distribution

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-51291

of material involving the sexual exploitation of children and possession of material involving the sexual exploitation of children. For the first time on appeal, McNealy contends he was denied his Sixth Amendment right to the effective assistance of counsel because his attorney failed to retain a defense expert in the field of computer forensics.

“[T]he general rule in this circuit is that a claim for ineffective assistance of counsel cannot be resolved on direct appeal when the claim has not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations.” *United States v. Cantwell*, 470 F.3d 1087, 1091 (5th Cir. 2006) (internal quotation marks and citation omitted). Because we conclude that “we cannot fairly evaluate the claim from the record,” we decline to consider McNealy’s claim on direct appeal. *See United States v. Guley*, 526 F.3d 809, 821-22 (5th Cir. 2008); *United States v. Lampazianie*, 251 F.3d 519, 527 (5th Cir. 2001).

AFFIRMED.