

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1730
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CATHRYN I. CLASEN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:91-CR-344-P(5)
- - - - -

June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Cathryn I. Clasen pleaded guilty and was convicted for misprision of a felony in connection with her employment in a family-owned business which promoted the sale of stolen automobile accessories. Clasen argues that trial counsel was ineffective for failure to "recognize, investigate, and give notice to the trial court that she was not competent to stand trial."

"[A] claim of ineffective assistance of counsel cannot be

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

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. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988). The only exception lies in those rare cases where the record adequately allows appellate review of the merits even though the issue was not raised. Id. at 314. This is not such a case.

Although Clasen points to an affidavit and a statement by her attorney that might, in some circumstances, tend to support a claim of incompetence, that issue, and counsel's actions in investigating the charges, were not raised in the trial proceedings currently on appeal.

Because Clasen's argument is limited to the ineffectiveness issue, we AFFIRM Clasen's conviction without prejudice to her right to seek post-conviction relief on a claim that counsel was ineffective. See id.