

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2673
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID PHILLIP ISCHY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-90-0137-01
- - - - -

June 24, 1993

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

PER CURIAM:*

David Phillip Ischy entered a guilty plea to a charge of conspiring to attempt an escape from prison and was sentenced to 46 months of imprisonment, to be served consecutively to his preceding sentence. See United States v. Ischy, No. 91-2434 (5th Cir. Apr. 17, 1992) (unpublished). Ischy appealed to this Court claiming that his guilty plea had not been taken in accordance with Fed. R. Crim. P. 11, that the district court did not rule on his objections to the PSR as required by Fed. R. Crim. P.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

32(c)(3)(D), and that his counsel was ineffective because she failed to file written objections to the Presentence Investigation Report (PSR). This Court found that the plea was accepted in compliance with Rule 11. The Court refused to entertain Ischy's ineffective assistance of counsel claim because it had not been presented to the district court and because the claimed errors had not been preserved for direct appeal. The Court also found that the district court did not comply with Rule 32 with respect to the objections to the PSR raised by Ischy at sentencing and remanded the case for resentencing. Id. at 5-7.

At resentencing, the district court announced its intention to make factual findings on the two objections to the PSR made by Ischy that were not ruled on during the original sentencing proceeding. In this appeal, Ischy does not argue that the district court's factual findings on these two issues were incorrect. Ischy argues that the district court should have conducted a de novo sentencing hearing, rather than limit the scope of the resentencing to the remand by this Court. Ischy admits that there is no binding authority for his position.

Ischy seeks to do in this appeal what this Court would not allow him to do in his previous appeal. The remand of the case for resentencing was to allow the district court to rule on the factual disputes arising out of the two objections to the PSR that were made. The district court has done this and Ischy has not disputed those findings.

AFFIRMED.