

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5659
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWIN CASIAS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-92-CA-502 (SA-89-CR-331(1))
- - - - -

May 6, 1993

Before POLITZ, Chief Judge,
HIGGINBOTHAM, and DEMOSS, Circuit Judges.

PER CURIAM:*

Edwin Casias appeals the denial of his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. He brings four issues on appeal. This Court will not consider the three issues which were not brought before the district court. See United States v. Cates, 952 F.2d 149, 152 (5th Cir.), cert. denied, 112 S.Ct. 2319 (1992).

The fourth issue, whether the sentencing court erred in using the total weight of the methamphetamine mixture in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

calculating the amount of controlled substance under U.S.S.G. § 2D1.1, came before the district court. Relief under § 2255 "is reserved for transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised on direct appeal and, would, if condoned, result in a complete miscarriage of justice." United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981).

Casias does not argue constitutional error. Even assuming his reason for failing to appeal directly this guideline issue is sound, no miscarriage of justice has occurred. Casias does not assert actual innocence of the offense. Further, his reliance upon caselaw is misplaced. This Court has interpreted Chapman v. United States, ___ U.S. ___, 111 S.Ct. 1919, 114 L.Ed.2d 524 (1991), as supporting past Fifth Circuit decisions upholding the use of the total weight of the mixture, including waste material, under § 2D1.1. United States v. Walker, 960 F.2d 409, 412 (5th Cir.), cert. denied, 113 S.Ct. 443 (1992). This guideline-application issue fails to come within the ambit of § 2255. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

AFFIRMED.