

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8264  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARTY BREWER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-92-CR-07  
- - - - -  
(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Marty Brewer appeals his conviction for drug conspiracy and possession with the intent to distribute less than 50 kilograms of marijuana under 21 U.S.C. §§ 841(a)(1) and 846.

Brewer raises for the first time on appeal the argument that the Government threatened co-defendant Norma Cook, a potential key witness for the defense, thereby depriving Brewer of his right to compulsory process and due process. "[I]ssues raised for the first time on appeal `are not reviewable by this [C]ourt

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

unless they involve purely legal questions and failure to consider them would result in manifest injustice.'" United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990) (citation omitted).

The record does not indicate whether Cook was a potential defense witness, although the Government listed her as a witness. Cook did not testify at Brewer's trial. Further, testimony at Brewer's sentencing hearing revealed that the Government "advised her of the fact that if she decided to get up on the stand and perjure herself, that she would be facing additional charges." Because the record does not indicate prosecutorial misconduct, there is no manifest injustice. See United States v. Viera, 839 F.2d 1113, 1115 (5th Cir. 1988) (en banc) ("A prosecutor is always entitled to attempt to avert perjury and to punish criminal conduct.").

Brewer also argues that his trial counsel failed to investigate Cook's change of potential testimony and that this failure amounted to ineffective assistance of counsel. Generally, an ineffective assistance of counsel claim cannot be addressed on direct appeal. United States v. Navejar, 963 F.2d 732, 735 (5th Cir. 1992). Because the record lacks necessary details to evaluate the trial counsel's strategy and reasons, we decline to review the merits of this argument on direct appeal without prejudicing Brewer's right to raise the issue in a § 2255 proceeding. See United States v. Bounds, 943 F.2d 541, 544 (5th Cir. 1991).

AFFIRMED.