IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1879
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN SENNETT WHITE,

Defendant-Appellant.

- - - - - - - - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:90-CR-82-G-02
- - - - - - - - - - -
(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

John Sennett White contends that "the trial court committed reversible error when it based its refusal to consider the application of U.S.S.G. § 3B1.2 on the fact that the defendant was convicted of an offense committed by only two participants." The Government responds that White has waived his right to raise this issue because it was not raised in his first appeal.

The Government's waiver argument has merit. In his first appeal, White challenged his conviction only. Because White

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

could have raised this sentencing challenge in his first appeal, but failed to do so, he has abandoned this claim, and this Court will not consider it on appeal. See Brooks v. United States, 757 F.2d 734, 739 (5th Cir. 1985) ("[A] second appeal generally brings up for revision nothing but proceedings subsequent to the mandate following the prior appeal") (citing United States v. Camou, 184 U.S. 572, 574, 22 S.Ct. 505, 46 L.Ed.2d 694 (1902)); cf. United States v. Fitzhugh, 984 F.2d 143, 145 n.3 (5th Cir.) (noting that defendant's failure to raise issue in first appeal called into question his ability to raise same issue in subsequent appeal, but pretermitting "this preliminary question" because claim was meritless), cert. denied, 114 S.Ct. 259 (1993); United States v. Martirosian, 967 F.2d 1036, 1038 n.2 (5th Cir. 1992) (addressing the merits of the defendant's claim, raised for the first time in a post-remand supplemental brief, where the Government fully responded and did not assert waiver or prejudice), overruled on other grounds, United States v. Johnson, 1 F.3d 296 (5th Cir. 1993) (en banc); United States v. Williams, 679 F.2d 504, 507 (5th Cir. 1982), cert. denied, 459 U.S. 111 (1983) (defendant allowed "two bites at the appellate apple" only because he was appellee in first appeal and thus, could not have raised the arguments he urged in second direct appeal).

AFFIRMED.