

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2412
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES NEALY a/k/a
David Michael Jones,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-3944 (CR-H-91-91)

- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

James Nealy, also known as David Michael Jones, pleaded guilty to conspiracy to possess with intent to distribute over 50 grams of cocaine base. Proceeding in forma pauperis (IFP) and pro se, Nealy, a federal inmate, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. The district court denied Nealy's § 2255 motion and subsequently granted his motion to proceed IFP on appeal.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

On appeal Nealy asserts that his counsel was ineffective on various grounds.** Nealy did not raise any ineffective assistance of counsel claims in his § 2255 motion. This Court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Except in unusual circumstances, an ineffective assistance of counsel claim is not such an issue as it involves factual determinations concerning counsel's actions. See United States v. Drobny, 955 F.2d 990, 996 (5th Cir. 1992). If a movant for § 2255 relief raises claims of ineffective assistance of counsel on appeal that were not before the district court, this Court will not consider them. United States v. Borders, 992 F.2d 563, 567 & n.1 (5th Cir. 1993). The presentation of the claims in his motion to the district court for leave to appeal IFP was insufficient to preserve them for our review. The district court's denial of Nealy's § 2255 motion is AFFIRMED.

** In his appellate brief, Nealy has abandoned the issues he raised in support of his motion requesting production of transcripts at Government expense. "Although [the Court] liberally construe[s] the briefs of pro se appellants, [the Court] also require[s] that arguments must be briefed to be preserved." Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988) (internal quotations and citations omitted).