

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3336
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EMANUEL BROWN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-638 (CR-89-310-H-1)

- - - - -
October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges
PER CURIAM:*

The district court's dismissal of Emanuel Brown's 28 U.S.C. § 2255 challenge to his sentence is AFFIRMED.

Brown argues that his sentence was excessive and that the Government failed to comply with the statutory requirements of 21 U.S.C. § 851(a), which mandates that the Government give a defendant notice that it intends to utilize the defendant's prior convictions at sentencing. See United States v. Marshall, 910 F.2d 1241, 1244-45 (5th Cir. 1990), cert. denied, 498 U.S. 1092

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(1991).

Brown's challenge to the length of his sentence concerns the district court's application of the sentencing guidelines. A challenge to a district court's technical application of the sentencing guidelines, however, is not a constitutional issue cognizable in a § 2255 proceeding. Neither is it one of the narrow range of issues which could not be raised on direct appeal and which would, if condoned, result in a complete miscarriage of justice. United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992) (citation omitted).

As for Brown's § 851(a) notice argument, he was actually sentenced under § 4B1.1, the guideline provision for career offenders. He was not sentenced pursuant to 21 U.S.C § 851(a). As such, the notice requirements of § 851 did not apply. See Marshall, 910 F.2d at 1245 (notice requirements of § 851 not applicable to defendants sentenced as career offenders under the guidelines).

AFFIRMED.