

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3481
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

RUPERTO BEST-FLETCHER,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-1487 (CR-89-150-H-6)
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Ruperto Best-Fletcher argues in his motion under 28 U.S.C. § 2255 that the district court erred by not awarding him the two-level downward adjustment for a minimal or minor role in the offense under U.S.S.G. § 3B1.1. A challenge to a district court's technical application of the sentencing guidelines, however, is not a constitutional issue cognizable in a § 2255 proceeding. United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992) (citation omitted).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Moreover, such a challenge is a nonconstitutional issue which could have been raised on direct appeal. Because it was not so raised, and because Best-Fletcher has not pleaded either cause or actual prejudice resulting from the alleged error, see United States v. Shaid, 937 F.2d 228, 232 (5th Cir. 1991) (en banc), cert. denied, 112 S.Ct. 978 (1992), it may not be asserted in a collateral proceeding. Vaughn, 955 F.2d at 368.

In his reply brief, Best-Fletcher asserts that this Court should consider the merits of his challenge "under the likelihood" that his counsel was ineffective at the time of sentencing. As he did not present this argument to the district court, and as this Court does not consider arguments raised for the first time in a reply brief, see United States v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989), Best-Fletcher's belated challenge to the effectiveness of his counsel is rejected.

Best-Fletcher also asserts in his reply brief that he should receive an evidentiary hearing on his challenge to his sentence. Again, however, his failure to present this argument sooner precludes its consideration now. Prince, 868 F.2d at 1386. Further, an evidentiary hearing was not required, as "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that [Best-Fletcher] is not entitled to relief in the district court." Rule 4(b) of the Rules Governing Section 2255 Proceedings; see also Hart v. United States, 565 F.2d 360, 362 (5th Cir. 1978).

AFFIRMED.