UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3494

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARY BETH THOMPSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-22 (CR-89-269-H)

(February 17, 1995)

Before DAVIS, JONES, and EMILIO M. GARZA, Circuit Judges.

EDITH H. JONES, Circuit Judge:[*]

Mary Beth Thompson appeals the district court's denial of her §2255 motion. She argues that she was not advised of her right to appeal the sentence and raises several sentencing issues. The district court denied relief, finding the sentencing issues procedurally barred and rejecting the merits of her claim concerning the right to appeal.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

On appeal Thompson challenges the conclusion that she was indeed advised of her right to appeal her sentence and that the court did not properly read the pre-sentence report prior to sentencing. She also contests the application of the sentencing guidelines in the computation of her sentence and the classification of amphetamine by the Attorney General. Further, Thompson intimates that the district court erred by refusing to address the merits of her sentencing complaints.[1]

I.

Thompson's argument regarding whether she was advised of the right to appeal is meritless. The district court properly noted that during colloquies at rearraignment and sentencing she was informed that she had a right to appeal. No clear error exists in this factual finding. See United States v. Gipson, 985 F.2d 212, 214 (5th Cir. 1993).

II.

Thompson's objections to the application of the sentencing guidelines based upon the court's alleged failure to read her PSR before sentencing and miscalculation of her sentence are technical challenges to the application of the guidelines. Relief under §2255 is reserved for violations of constitutional rights and for a narrow range of injuries that would result in a complete miscarriage of justice. United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981). "A district court's technical

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[1] In her reply brief, Thompson for the first time asserts that she received ineffective assistance of counsel. We do not consider issues that are untimely raised.

application of the Guidelines does not give rise to a constitutional issue." United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1982). Neither of these issues, therefore, are cognizable in a collateral proceeding.

III.

Thompson's argument regarding the classification of amphetamine is theoretically cognizable in a collateral proceeding because it is of constitutional dimension. United States v. Kinder, 946 F.2d 362, 368 (5th Cir. 1991), cert. denied, 112 S.Ct 1677, 2290 (1992). But this claim could also have been raised on direct appeal, consequently, showing cause and prejudice are ordinarily a prerequisite to addressing the merits of such a contention in this collateral review proceeding. The district court properly noted the lack of cause and the absence of prejudice identified by Price.

Nevertheless, we recognize that United States v. Drobny, 955 F.2d 990, 995 (5th Cir. 1992), could be read to require the government to raise the procedural bar prior to invocation of the bar by the court. The government did not raise the procedural bar in the district court but does defend that court's reliance on cause and prejudice before this court. Although we doubt that Drobny holds much more than that a procedural bar is not different from any other legal theory the government runs the risk of waiving

by neglecting to advance before the district court,[2] we need not resolve that issue here.

This court has explicitly held that amphetamine was properly reclassified as a Schedule II controlled substance. See United States v. Daniel, 813 F.2d 661, 663 (5th Cir. 1987). Accordingly, we **AFFIRM** the denial of Thompson's motion.

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[2] "As a general principle of appellate review, this Court will not consider a legal issue or theory not presented to the [federal district court.]" Drobny, 955 F.2d at 995 (citing Washington v. Watkins, 655 F.2d 1346, 1368 (5th Cir. 1981).