IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3673
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EMERSON NELSON,

Defendant-Appellant.

- - - - - - - - - -

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-93-105-F

- - - - - - - - - -

(May 18, 1994)

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

PER CURIAM:*

Emerson Nelson argues for the first time on appeal that the district court violated Fed. R. Crim. P. 32 by failing to ascertain whether Nelson had an opportunity to review the presentence report (PSR). He does not specifically argue that he did not in fact review the PSR, only that the court did not ascertain that he had the opportunity to do so.

Issues involving factual determinations not objected to at sentencing cannot be raised for the first time on appeal. United States v. Pigno, 922 F.2d 1162, 1166 (5th Cir. 1991). Because

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Nelson raises the issue for the first time on appeal and because the issue requires a factual determination whether Nelson had sufficient opportunity to review his PSR, Nelson does not raise an issue that can be properly addressed on appeal.

Nelson also argues that he received ineffective assistance of counsel from his trial attorney. The general rule in this Circuit is that "a claim of ineffective assistance of counsel cannot be resolved on direct appeal when the claim has not been raised before the district court since no opportunity existed to develop the record on the merits of the allegations." United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988).

Finally, Nelson argues that his guilty plea was rendered unknowing and involuntary by the district court's and his attorney's failure to explain the interaction between mandatory minimum sentences and the sentencing guidelines.

When a defendant argues that a district court has violated Rule 11, this Court conducts a two-part analysis: 1) Did the sentencing court vary from the procedures required by Rule 11; and 2) if so, did the variance affect the substantial rights of the defendant, i.e., was it harmless error? United States v. Johnson, 1 F.3d 296, 298 (5th Cir. 1993) (en banc). "The district court is not required to calculate or explain the applicable guideline sentence before accepting a guilty plea." United States v. Jones, 905 F.2d 867, 868 (5th Cir. 1990).

The district court informed Nelson of the statutory mandatory minimum sentence for his offense at rearraignment.

Therefore, the district court did not violate Rule 11 by not explaining to Nelson the minimum sentence that he was likely to receive under the guidelines. Additionally, "reliance on the erroneous advice of counsel relative to the sentence likely to be imposed does not render a guilty plea unknowing or involuntary." United States v. Santa Lucia, 991 F.2d 179, 180 (5th Cir. 1993).

This appeal borders on being frivolous. We caution counsel. Federal Public Defenders are like all counsel subject to sanctions. They have no duty to bring frivolous appeals; the opposite is true. See United States v. Burleson, ___ F.3d ___ (5th Cir. May 18, 1994, No. 93-2619).

AFFIRMED.