

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 93-4108
93-4198
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENNETH JOSEPH MASAT,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Texas
(TY 87 7 CR (1))

(October 18, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Because we find no error in any of the district court's
rulings, the judgment of the district court is

A F F I R M E D.¹

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

¹In affirming the judgment of the district court, we should note that on appeal, Masat argues that the district judge took an adversarial position against him and speculates that it might have been because he was a pro se defendant. Masat argues further that

the case should be remanded for a rehearing and resentencing before an impartial judge. Masat's argument, liberally construed, is that the judge should have recused himself. Although the district court did not address the issue, the record fails to support Masat's argument.

"[M]ost matters relating to judicial disqualification [do] not rise to a constitutional level." U.S. v. Couch, 896 F.2d 78, 81 (5th Cir. 1990) (citation and internal quotation omitted). The claim is cognizable under § 2255 only if "there was an appearance of impropriety which rose to the level of a fundamental defect resulting in a complete miscarriage of justice." Id. (internal quotations omitted).

Masat supports his argument that the district judge was biased by noting that the judge failed to order an evidentiary hearing at sentencing to correct the PSR. Masat elaborates further in his reply brief that, by ignoring his contention that the PSR was inaccurate, the judge "unabashedly sided with the government." However, adverse rulings do not constitute a sufficient basis to support a motion for recusal. U.S. v. MMR Corp., 954 F.2d 1040, 1045 (5th Cir. 1992).