

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5400
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEVE OLIVER LYN, a/k/a
Steve Lyn, a/k/a
Christopher Lyn,

Defendant-Appellant.

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Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:93-CV-0406 (6:92-CR-60054)

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(May 17, 1994)

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

PER CURIAM:*

Steve Oliver Lyn appeals the denial of his § 2255 motion. The Government argues that Lyn's complaints regarding his sentencing raise issues under Fed. R. Crim. P. 11 and 32 which were not objected to at sentencing or raised on direct appeal; thus, these issues are not cognizable under § 2255.

"The grounds for relief under § 2255 are narrower than those for relief on direct appeal." United States Smith, 844 F.2d 203, 205 (5th Cir. 1988). Relief under § 2255 is reserved for

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice. United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981). Nonconstitutional claims that could have been raised on direct appeal, but were not, may not be raised in a collateral proceeding. Id. In determining whether a claim of error is cognizable under § 2255, this Court first examines whether the defendant alleged a jurisdictional deficiency or that he was deprived of a constitutionally secured right. Smith, 844 F.2d at 206.

Lyn argues that the district court did not make a determination at the guilty plea-sentencing hearing as to the amount of drugs attributable to Lyn, and thus, failed to address a Rule 11 core concern.

This alleged Rule 11 violation is not cognizable under § 2255 because it is neither a constitutional nor a jurisdictional deficiency and Lyn has not shown that the alleged error "resulted in a complete miscarriage of justice or in a proceeding inconsistent with the rudimentary demands of fair procedure." United States v. Timmreck, 441 U.S. 780, 784, 99 S.Ct. 2085, 60 L.Ed.2d 634 (1979) (internal quotation and citation omitted); see also United States v. Prince, 868 F.2d. 1379, 1385 (5th Cir.), cert. denied, 493 U.S. 932 (1989).

Lyn argues that if he had been told of the amount of drugs attributable to him, he would not have pleaded guilty. This argument was not raised in Lyn's § 2255 motion. This Court is

precluded from considering issues on appeal that were not presented to the district court. United States v. Carvajal, 989 F.2d 170, 170 (5th Cir. 1993).

Lyn raises several challenges to the district court's calculation of his sentence under the Sentencing Guidelines. Lyn did not directly appeal his sentence. His allegations about sentencing errors do not give rise to a constitutional issue and could have been raised on direct appeal. United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). Thus, this claim is not cognizable in a § 2255 motion. See Capua, 656 F.2d at 1038.

Lyn acknowledges that he did not raise these grounds in the district court and that this typically results in a waiver of these claims. Lyn argues that these errors were not made by the sentencing court but by the district court in ruling on his § 2255 motion, warranting review by this court.

The district court did not apply the guidelines in denying § 2255 relief. In its order denying Lyn's § 2255 motion, the district court explained how it reached the conclusion that the Guideline sentence would be higher than the statutory maximum. To the extent that Lyn argues that sentencing court erred by failing to make findings relative to sentencing factors, the alleged violations of Rule 32 could have been raised on direct appeal and are not of constitutional magnitude. United States v. Perez, 952 F.2d 908, 910 (5th Cir. 1992). Thus, this claim is not cognizable under § 2255. Capua, 656 F.2d at 1038.

Lyn argues that the district court erred in sentencing him to the statutory maximum sentence. He argues that if the

district court had considered only the amount of marijuana in his possession at the time of his arrest, the guidelines sentencing range would have been less than the statutory maximum sentence.

Lyn's allegation about the maximum sentence does not give rise to a constitutional issue and could have been raised on direct appeal. Thus, this claim is not cognizable in a § 2255 motion. See Capua, 656 F.2d at 1038.

Lyn argues that the district court erred by not holding an evidentiary hearing. None of the claims raised by Lyn in his § 2255 motion is cognizable under § 2255. Because the motion and record show that Lyn was entitled to no relief under § 2255, an evidentiary hearing was not required. Allen v. United States, 634 F.2d 316, 318 (5th Cir. 1981).

The judgment denying § 2255 relief is AFFIRMED.