IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 93-8672
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL RAY SOLOMON,

Defendant-Appellant.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. W-93-CA-186 (W-91-CR-142 (1))
- - - - - - - - - - -
(May 18, 1994)

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

PER CURIAM:[*]

Michael Ray Solomon could have argued on direct appeal that a Head Start center is not a public school, but he did not do so. (At trial, Solomon's attorney stipulated that a Head Start Center is a public school.) This allegation does not present an issue for which relief is available under 28 U.S.C. § 2255. See United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981).

For the same reason, the Court will not consider Solomon's argument that his financial and social status rendered the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

imposition of a $4000 fine cruel and unusual punishment. Regardless of Solomon's characterization of the issue, the allegation does not implicate a constitutional question. See United States v. Davis, No. 93-8131 (5th Cir. Oct. 29, 1993) (unpublished; copy attached) (challenge to the propriety of a fine is a matter relative to sentencing which should be raised on direct appeal rather than on § 2255 review).

Solomon is not entitled to relief based on his allegations of ineffective assistance of counsel because he has not demonstrated that his attorney's conduct "fell below an objective standard of reasonableness." Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

The Court declines to consider Solomon's conclusional argument that his appellate counsel was ineffective. Brinkmann v. Abner, 813 F.2d 744, 748 (5th Cir. 1987); see Fed. R. App. P. 28(a)(5).

AFFIRMED.