

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9033
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VINCENTE AGUIRRE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:93-CR-69-A
- - - - -
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Vincente Aguirre's sole argument on direct appeal is that he was denied effective assistance of counsel because his trial counsel failed to investigate and find evidence and a witness that would support his defense that he was out of the country at the time of the crime for which he was convicted.

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

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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). As this claim is presented for the first time on appeal, and the record is not yet developed, we decline to address the merits of the ineffectiveness claim on appeal, without prejudice to Aguirre's right to raise the issue in a proceeding under 28 U.S.C. § 2255. See Higdon, 832 F.2d at 314.

Aguirre's conviction is AFFIRMED.