

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-9172  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODNEY FEATHERSON, a/k/a  
River Rat,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:93-CV-147-C (5:90-CR-40-03)

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(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Rodney Feathersen appeals the dismissal, with prejudice, of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

Relief under § 2255 is reserved for 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).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Nonconstitutional claims that could have been raised on direct appeal, but were not, may not be asserted in a collateral proceeding. Id.

Featherson's challenge to the district court's application of U.S.S.G. § 1B1.3 is not cognizable in § 2255 because a district court's technical application of the Guidelines does not give rise to a constitutional issue. United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). To the extent that Featherson argues that the district court failed to make findings regarding the amount of drugs foreseeable to him, this argument is also not cognizable in § 2255. This nonconstitutional issue could have been raised on direct appeal, but was not, thus precluding it from consideration under § 2255. Capua, 656 F.2d at 1037.

Featherson argues that the district court failed to make findings on controverted matters in the PSR. "Violations of Rule 32 may only be raised on collateral attack if the claim could not have been raised on direct appeal." United States v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989). "A Rule 32 violation can be addressed in a direct appeal. . . ." Id. Thus, Featherson's claim of a Rule 32 violation is not cognizable in a § 2255 motion. See Capua, 656 F.2d at 1038. This argument is also belied by the record. Featherson adopted the findings of the PSR, thus there were no controverted matters.

Featherson argues that he has the right "to appeal the application of sentencing guidelines to his case. Because the trial court and counsel may have misled Appellant with regard to his right to appeal the sentencing aspect of his case, this court

should find that Appellant should be granted the right to file this challenging brief of application of USSG 1B1.3(A)."

To the extent Featherson is attempting to argue ineffective assistance of counsel, he has not alleged facts from which this Court could conclude that his attorney's performance was deficient. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Featherson bears the burden of showing that his attorney's performance was unreasonable and that he was prejudiced. Id. The attorney's performance is presumed to be within the wide range of reasonable and professional assistance. Id. at 689. Featherson's allegations lack specificity and are insufficient to overcome this presumption.

Featherson also states that he is challenging the sufficiency of the evidence to support his conviction on the conspiracy count. Featherson raised this issue on direct appeal, and this Court held that the evidence was sufficient to support his conviction for conspiracy. United States v. Featherson, 949 F.2d 770, 774-76 (5th Cir. 1991), cert. denied, 112 S. Ct. 1771 (1992). This Court will not reexamine issues in § 2255 motions that have been previously disposed of on direct appeal. United States v. Kalish, 780 F.2d 506, 508 (5th Cir.) ("[I]ssues raised and disposed of in a previous appeal from an original judgment of conviction are not considered in § 2255 Motions."), cert. denied, 476 U.S. 1118 (1986).

Although couched in terms of statutory misinterpretation, Featherson is really challenging the sufficiency of his

conviction for violation of 18 U.S.C. § 924(C)(1). Featherson raised this issue on direct appeal, and this Court held that the evidence was sufficient to support his conviction on the firearms charge. Featherson, 949 F.2d at 777. This Court will not reexamine issues in § 2255 motions that have been previously disposed of on direct appeal. Kalish, 780 F.2d at 508.

The district court's dismissal with prejudice is AFFIRMED. Because Featherson raised no issues cognizable in a § 2255 motion or reviewable by this Court, his motion to supplement the record is DENIED.