

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10528
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CLARENCE ROBINSON,
a/k/a Clarence McVay Robinson,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:94-CR-01-C

- - - - -
(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Clarence Robinson argues that the district court erred by denying his motion to suppress. He contends that the consent to search was illegally extended to a houseguest who had a reasonable expectation of privacy. The Government asserts that the search was justified by the voluntary consent of a third party.

A valid and unconditional guilty plea, however, waives all nonjurisdictional defects in the proceedings leading to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conviction, including Fourth Amendment claims. United States v. Smallwood, 920 F.2d 1231, 1240 (5th Cir.), cert. denied, 501 U.S. 1238 (1991); Norman v. McCotter, 765 F.2d 504, 511 (5th Cir. 1985). Because he entered an unconditional guilty plea, Robinson is barred from appealing the district court's denial of his motion to suppress.

Robinson further argues that he received ineffective assistance of counsel, thus rendering his guilty plea involuntary. He contends that his counsel failed to investigate and interview possible witnesses, failed to subpoena known witnesses, failed to investigate Robinson's past criminal record, and misstated the application of the sentencing guidelines, and that he was prejudiced by such ineffective assistance.

"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 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). This issue was not addressed in the district court. Although Robinson stated at the sentencing hearing that he was not satisfied with his attorney, the record was not developed on this issue. Therefore, we decline to address the issue on direct appeal, although without prejudice to Robinson's right to raise the issue in a 28 U.S.C. § 2255 motion.

AFFIRMED.