

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20222
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISRAEL ESPERICUETA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-90-0428-12
- - - - -

(January 27, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

In this direct criminal appeal, Israel Espericueta contends that he received ineffective assistance of counsel. "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),

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

cert. denied, 484 U.S. 1075 (1988). This issue was not raised in the district court. Therefore, we decline to address the issue, although without prejudice to Espericueta's right to raise the issue in a 28 U.S.C. § 2255 motion. Id. at 316.

Espericueta next contends that the district court erred in calculating the amount of drugs attributable to him for sentencing purposes, and also for enhancing his base offense level due to a co-conspirator's possession of a dangerous weapon.

This Court need not address these two sentencing issues because they were not presented to the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [Court] unless they involve purely legal questions and failure to consider them would result in manifest injustice." Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). These issues are not purely legal questions.

Espericueta also contends that the district court improperly increased his criminal history category due to an outstanding state warrant. At sentencing, the probation officer testified that she was supplied with supporting court documents verifying that an outstanding state warrant existed. The district court specifically adopted the presentence investigation report (PSR) which contained the same information.

In making sentencing decisions, the district court properly considers any relevant evidence, "provided that the information has sufficient indicia of reliability to support its probable accuracy." U.S.S.G. § 6A1.3(a). Because the PSR is reliable, it may be considered as evidence by the trial court when making

sentencing determinations. United States v. Lghodaro, 967 F.2d 1028, 1030 (5th Cir. 1992).

Espericueta has not shouldered his burden of demonstrating that the information contained in the PSR is materially untrue. See United States v. Rodriguez, 897 F.2d 1324, 1328 (5th Cir.), cert. denied, 498 U.S. 857 (1990). PSR information supplied by investigating agents is sufficiently reliable. See United States v. Manthei, 913 F.2d 1130, 1138 (5th Cir. 1990). The district court did not clearly err regarding the calculation of Espericueta's criminal history category. See United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990).

Espericueta's final contention is that his due process rights were violated because the district court did not permit him an adequate opportunity to present information at sentencing. This issue was not raised in the district court, is not properly before this Court, and does not involve a purely legal issue. We decline to consider the argument. See Varnado, 920 F.2d at 321.

AFFIRMED.