

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20399

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODRIGO G. ALVARADO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 93 3942; (CR H 89 215 2))

(November 11, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Rodrigo Alvarado appeals from the district court's denial of his 28 U.S.C. § 2255 habeas petition. First, he argues that trial counsel was ineffective in making an unclear motion to suppress evidence, but the trial judge clarified the items being suppressed and granted the motion in part. Alvarado has not shown a reasonable probability that, but for the unclearness, his sentence

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

"would have been significantly less harsh." Spriggs v. Collins, 993 F.2d 85, 88 (5th Cir. 1993) (per curiam). Likewise, he has made no specific showing as to how his appellate counsel was deficient or how any deficiency prejudiced him.

Because Alvarado's three Sentencing Guidelines arguments could have been raised on direct appeal and are not constitutional arguments, they are not cognizable. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992) (per curiam). We will not consider his comments relating to the indictment, magistrate referral, grand jury, and his attorney's malfeasance, because he raises all of these issues for the first time on appeal. And because there is no right to counsel at a presentence interview, United States v. Bounds, 985 F.2d 188, 194 (5th Cir.), cert. denied, 114 S. Ct. 135 (1993), we reject his claim that he was interviewed without counsel present.

AFFIRMED.