

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30086  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WARDELL HUNTER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. CA-93-3722 (CR-89-359-A-5)  
- - - - -

(July 21, 1994)

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

PER CURIAM:\*

Wardell Hunter was convicted for conspiracy to possess with intent to distribute cocaine in violation of 18 U.S.C. § 846. Hunter filed a post-conviction motion, using a 28 U.S.C. § 2255 form, requesting that his sentence be corrected to reflect his acceptance of responsibility. The district court construed the motion as a Rule 35 motion and denied relief.

In July 1989, when the offense was committed, Rule 35 provided for correction of sentences on remand and for reduction of sentences for changed circumstances on motion of the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Government. See Fed. R. Crim. P. 35, Advisory Committee Notes, 1991 Amendment. Neither of these circumstances are present in this case. Hunter's motion was properly brought pursuant to § 2255.

In United States v. Perez, 952 F.2d 908, 909-10 (5th Cir. 1992), the Court held that the refusal of the trial court to award a downward adjustment in offense level for acceptance of responsibility did not give rise to a constitutional claim cognizable in a § 2255 proceeding. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992) (a district court's technical application of the guidelines does not present a constitutional issue).

Because Hunter's motion could not have been brought under Rule 35 and because he has raised issues which are not cognizable in a § 2255 proceeding, the district court's denial of Hunter's post-conviction motion is AFFIRMED. Hunter has filed a motion for discovery, which is DENIED.