

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30255
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NATHANIEL STARNES,

Defendant-Appellant.

- - - - -
Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-94-1022 (CR-90-369-A)
- - - - -
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Nathaniel Starnes's motion for appointment of counsel is DENIED.

Starnes challenges the district court's order by arguing that the sentencing court erred in attributing to Starnes as relevant conduct the additional 3.5 kilograms of cocaine seized in Houston, Texas. Starnes misunderstands that the district court construed his motion to reduce his sentence as a motion

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

brought pursuant to Fed. R. Crim. P. 35, not as a motion under 28 U.S.C. § 2255.

Under the circumstances of this case, Rule 35 does not provide a mechanism for Starnes' requested reduction in sentence. See Rule 35. Even if his motion had been construed pursuant to § 2255, a technical application of the sentencing guidelines to a sentence is not an issue cognizable under § 2255. See United States v. Vaughn, 955 F.2d 367, 268 (5th Cir. 1992). Under either construction, the district court did not err in denying relief.

Starnes argues that he was denied due process by the denial of his motion after another district court judge had ordered the Government to answer his § 2255 motion. His argument is meritless because Starnes has not demonstrated that he was entitled to § 2255 relief. See Vaughn, 955 F.2d at 368.

For the first time on appeal, Starnes argues that the sentencing court lacked jurisdiction to consider for sentencing a drug amount seized within the boundaries of the Southern District of Texas. This Court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this [C]ourt 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).

AFFIRMED. MOTION DENIED.