

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-30725

Summary Calendar

---

UNITED STATES,

Plaintiff-Appellee,

versus

ALDOLPHUS WILSON,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA 94 528 J(CR 92 214 F))

---

( June 28, 1995 )

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

Wilson's sentencing-guidelines arguments are not cognizable on habeas because they are nonconstitutional and could have been raised on direct appeal. Wilson claims that the prosecution breached the plea agreement and that he deserved a downward departure for acceptance of responsibility, but we will not consider these issues on appeal because he did not raise them in

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court. His ineffective assistance of counsel claims do not allege prejudice. However, one of these claims is that Wilson's attorney was ineffective in failing to notify Wilson of the deadline for filing a notice of appeal and failing to perfect an appeal. "If a [petitioner] can prove that the ineffective assistance of counsel denied him the right to appeal, then he need not further establish--as a prerequisite to habeas relief--that he had some chance of success on appeal." United States v. Gipson, 985 F.2d 212, 215 (5th Cir. 1993). The district court denied this claim on the ground that Wilson's pleadings were conclusory. We disagree with this characterization; in the court below, Wilson "assert[ed] that he informed his attorney immediately after sentencing of his desire to appeal and did not timely file his notice of appeal only as [a] result of [his] attorney's ineffective assistance in failing to inform him of [the] appeal deadline." We therefore VACATE and REMAND for an evidentiary hearing or other appropriate proceedings on this issue, and AFFIRM the denial of Wilson's other claims.