

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40393
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT EARL REED,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 93-2071 (93-CR-50051)
- - - - -

(September 20, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Robert Earl Reed argues for the first time on appeal that the sentencing court improperly calculated his guideline level. Issues raised for the first time on appeal are reviewable only if they involve purely legal questions and failure to address them would result in manifest injustice. United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990). A misapplication of the sentencing guidelines does not constitute a constitutional violation and is outside the scope of relief provided by a § 2255

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

motion. United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). Therefore, no miscarriage of justice will result in the Court's refusal to review this issue.

Reed's contention that "the waiver in his plea agreement wherein [he] waived his right to appeal and his right to file a habeas corpus proceeding under 28 U.S.C. § 2255" lacks a factual basis inasmuch as his plea agreement contained no such waiver.

The judgment of the district court is AFFIRMED.