IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40808
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALVIN JONES,

Defendant-Appellant.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:94-CV-290 (1:92-CR-53-3)

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June 27, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Alvin Jones appeals the denial of his motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255.

Jones argues that the indictment was non-specific as to the offense conduct. Although this issue is raised for the first time on appeal, it will be considered because it presents a purely legal question. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991) ("issues raised for the first time on appeal are not reviewable by this court unless they involve purely legal

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

questions and failure to consider them would result in manifest injustice."); see also United States v. West, 22 F.3d 586, 590 (5th Cir.), cert. denied, 115 S. Ct. 584 (1994) (whether indictment sufficiently alleges elements of offense is a question of law to be reviewed de novo).

Relief under § 2255 is limited to allegations of error that are of constitutional or jurisdictional magnitude, and would apply to Jones's challenge to the sufficiency of the indictment. See United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. Unit A Sep. 1981). When a challenge to the sufficiency of an indictment is presented for the first time on collateral review, however, this court will consider the challenge "only in exceptional circumstances." United States v. Armstrong, 951 F.2d 626, 628 (5th Cir. 1992). The indictment "is entitled to liberal review in favor of the [G]overnment and will be held sufficient if by any reasonable construction it is understood to charge an offense." Id. (internal quotation marks and citation omitted). The indictment satisfies this criterion inasmuch as it includes a reference to the statute which Jones was convicted of offending and alleges the elements of the offense charged. See Armstrong, 951 F.2d at 628.

Jones did raise in the district court whether he should have received a lesser sentence based on a reduction in his offense level pursuant to § 3B1.2. However, this claim does not fall within the purview of § 2255. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992) (the technical application of the Sentencing Guidelines does not give rise to a constitutional

issue, and, therefore, does not fall within the purview of § 2255). Because the remaining issues presented by Jones are raised for the first time on appeal and do not present purely legal questions, they will not be considered. Varnado, 920 F.2d at 321.

AFFIRMED.