

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50023
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO PEREZ RAMOS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-93-CR-7
- - - - -
(July 22, 1994)

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

PER CURIAM:*

Francisco Perez Ramos (Perez) argues that he was denied effective assistance of trial counsel because his counsel failed to file a pretrial motion to suppress evidence seized following his arrest.

"The general rule in this circuit is that a claim of ineffective assistance of counsel cannot be resolved on direct appeal when the claim has not been before the district court since no opportunity existed to develop the record on the merits of the allegations." United States v. Higdon, 832 F.2d 312, 313-

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

14 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988). If the defendant fails to raise the claim before the district court, this Court will reach the merits of the claim only if the record is well-developed. Id.

Perez did not raise an ineffective-assistance-of-counsel claim in the district court. There is no evidence in the record why counsel proceeded in the manner in which he did prior to trial and, thus, this Court is unable to review properly on direct appeal the ineffective-assistance claim. See United States v. Freeze, 707 F.2d 132, 139 (5th Cir. 1983).

Perez may raise this issue in an appropriate proceeding under 28 U.S.C. § 2255. United States v. Casel, 995 F.2d 1299, 1307 (5th Cir. 1993), cert. denied, 114 S.Ct. 1308 (1994). The district court's judgment is affirmed without prejudice to Perez's right to raise the ineffective-assistance claim in a § 2255 motion. Id.

AFFIRMED.