

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60663
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PABLO VEGA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-94-153
- - - - -

June 27, 1995

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

PER CURIAM:*

Pablo Vega's ineffectiveness claim is not cognizable in this proceeding because he did not raise the issue in the § 2255 motion which he now appeals. Vega raised only a challenge to his sentence. Vega failed to notice an appeal of the district court's denial of an earlier § 2255 motion in which he raised the issue of ineffective assistance of counsel. The timely filing of a notice of appeal is a mandatory precondition to the exercise of appellate jurisdiction. Mann v. Lynaugh, 840 F.2d 1194, 1197

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

(5th Cir. 1988). Vega's failure to appeal timely the district court's dismissal of his ineffectiveness claims in his prior § 2255 motion precludes this court from reviewing them on appeal. See Fed. R. App. P. 4(a).

To the extent that Vega argues that the Government and/or the district court acted improperly concerning the application of the sentencing enhancement provisions of 21 U.S.C. § 841, Vega raises these issues for the first time on appeal. "[I]ssues raised for the first time on appeal are not reviewable by this court 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). This court therefore will not review these new challenges to Vega's sentence.

Challenges to a trial court's factual findings on which the court bases a sentence may not be raised in a § 2255 proceeding if they could have been raised on direct appeal. See United States v. Perez, 952 F.2d 908, 909-10 (5th Cir. 1992). Vega's challenge to the district court's factual finding concerning the weight of the drugs on which the court based its sentence raises a nonconstitutional issue that could have been, but was not, raised on direct appeal because of Vega's waiver. The issue is thus not cognizable in a § 2255 proceeding.

Vega's bases for this appeal are without arguable merit, and his appeal is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because this appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.