

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-10318
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT CHRISTOPHER RACKSTRAW,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:94-CV-564-Y/4:92-CR-10-8
- - - - -

April 16, 1996

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Robert Christopher Rackstraw has appealed the denial of his 28 U.S.C. § 2255 motion. Rackstraw contends that he was the victim of selective prosecution and entrapment by Government officials. Rackstraw waived these nonjurisdictional issues by pleading guilty. United States v. Sarmiento, 786 F.2d 665, 668 (5th Cir. 1986). Rackstraw contends that the sentencing scheme for crack-cocaine violations violates his right to due process. Rackstraw argues: (1) the sentencing scheme is racially disparate

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

in effect; (2) differences in punishment for crack-cocaine and powdered-cocaine offenses are irrational; and (3) the terms "crack-cocaine" and "cocaine-base" are unconstitutionally vague. Rackstraw also contends for the first time in his reply brief that his sentence is unconstitutionally harsh. These issues have been decided previously to the contrary. United States v. Fisher, 22 F.3d 574, 579 (5th Cir.), cert. denied, 115 S. Ct. 529 (1994). Finally, Rackstraw contends that the district court should not have considered relevant conduct in determining his sentence and that the district court failed to make findings with respect to similarity, regularity, and temporal proximity of his prior acts. The district court's technical application of the sentencing guidelines does not give rise to a constitutional issue and is not cognizable in a § 2255 proceeding. United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

This appeal is without arguable merit and thus frivolous. Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2. We caution Rackstraw that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Rackstraw is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.

APPEAL DISMISSED; SANCTION WARNING GIVEN.