

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40822
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PURNIE JUNIOR MELCHER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-C-94-165
- - - - -

June 27, 1996

Before HIGGINBOTHAM, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Purnie Junior Melcher appeals his conviction for possession of 305 kilograms of marihuana with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(B). Melcher argues his trial counsel was ineffective for failing to submit to the jury evidence of Melcher's post-traumatic stress disorder.

"The general rule in this circuit is that a claim of ineffective assistance of counsel cannot be resolved on direct appeal when the

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

claim has not been raised 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, 313-14 (5th Cir. 1987), *cert. denied*, 484 U.S. 1075 (1988). The record is void of any evidence concerning trial counsel's reasoning or intentions in adopting the particular trial strategy pursued. Further, the evidence of record relating to Melcher's illness is an insufficient basis on which to evaluate the merits of his claim that his nervous appearance upon being confronted by a border patrol officer owed itself to his medical condition rather than to guilty knowledge. The conviction is affirmed without prejudice to Melcher's ability to raise the ineffectiveness of trial counsel in a motion under 28 U.S.C. § 2255.

AFFIRMED.