

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50451
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KEITH WARREN BLAYNE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-95-CR-272(2)
- - - - -

April 17, 1997

Before REAVLEY, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Keith Warren Blayne appeals his guilty-plea conviction for conspiracy to manufacture, distribute, and possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. § 846. He argues that the Government withheld information relevant to his sentencing in violation of Brady v. Maryland, 373 U.S. 83 (1963). Because he did not raise this issue in the district court, review is limited to plain error. United States

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994)(en banc).

Because Blayne was aware of the extent of his own cooperation, Blayne has not shown that the Government withheld material evidence in violation of Brady. See United States v. Ramirez, 810 F.2d 1338, 1343 (5th Cir. 1987).

Blayne also argues that his trial counsel was ineffective in that he allowed Blayne to accept the plea agreement which contained a stipulation that Blayne was a manager in the conspiracy. A claim of ineffective assistance of counsel cannot be resolved on direct appeal when the 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. Navejar, 963 F.2d 732, 735 (5th Cir. 1992). Because Blayne did not raise this issue in the district court, the record has not been developed on the merits of his allegations and we decline to review them at this time.

The Government filed a motion to seal its brief. The motion is GRANTED.

AFFIRMED; GOVERNMENT'S MOTION TO SEAL BRIEF GRANTED.