

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50882
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TIMOTHY ROBERTS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-95-CV-294-SS
USDC No. A-94-CR-72-4-SS

August 31, 1999

Before POLITZ, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Timothy Roberts, federal prisoner # 60934-080, filed this pro se appeal of the district court's denial of his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

Roberts' motions to amend the district court's order and for discovery are DENIED.

Roberts argues that he received ineffective assistance from his trial counsel, Terry Davis, in two respects. First, Roberts

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

contends that Davis should have raised the issue of whether the methamphetamine attributed to him for sentencing purposes was d-methamphetamine or l-methamphetamine, substances that are treated differently in the version of the Sentencing Guidelines under which Roberts was sentenced. Roberts has failed to show that he was prejudiced by any omission of his counsel. See Strickland v. Washington, 466 U.S. 668, 694 (1984); United States v. Acklen, 47 F.3d 739, 742 (5th Cir. 1995).

Roberts also argues that he received ineffective assistance from his counsel because his counsel failed to file a notice of appeal. The district court's finding that Roberts waived his right to appeal is not clearly erroneous. See United States v. Gipson, 985 F.2d 212, 216 (5th Cir. 1993); Meeks v. Cabana, 845 F.2d 1319, 1323 (5th Cir. 1988).

Accordingly, the judgment of the district court is AFFIRMED. All outstanding motions are DENIED.