

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-51188  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TOM WILKINSON EASTLAND,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-97-CV-135; W-91-CR-43-1

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February 29, 2000

Before POLITZ, WIENER, and PARKER, Circuit Judges.

PER CURIAM:\*

Tom Eastland, federal prisoner # 56063-080, appeals the denial of his 28 U.S.C. § 2255 motion. We granted Eastland a certificate of appealability on his claim that his attorney was ineffective for not investigating and calling witnesses to establish the type of methamphetamine involved in Eastland's criminal violation. On appeal, Eastland contends that the methamphetamine with which he was involved had two separate isomers (d and l), and that his attorney was not familiar with the two types of methamphetamine. He further maintains that his attorney did not research the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Sentencing Guidelines or the law, and that he would have received a lesser sentence had his attorney not been ineffective.

At the time of sentencing, there was no dispositive precedent directing how d,l-methamphetamine, the substance involved in Eastland's case, should impact the sentence. The failure of Eastland's attorney to raise the then innovative d,l-methamphetamine issue did not render his performance constitutionally deficient.<sup>2</sup> Counsel objected to the recommendation in the presentence report that the substance be considered pure or actual methamphetamine. Further, Eastland has not shown, and the record does not reflect, that had his attorney raised the d,l-methamphetamine issue, Eastland would have received a less severe sentence. The trial judge was aware of substantial additional methamphetamine involved in Eastland's criminal conduct.

Our review of the voluminous record, briefs, and dispositive precedents persuades that Eastland has shown neither deficient performance by his counsel nor prejudice based on any alleged deficient performance.<sup>3</sup>

The judgment appealed is AFFIRMED.

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<sup>2</sup>**United States v. Seyfert**, 67 F.3d 544 (5th Cir. 1995).

<sup>3</sup>See **id.** at 548-49; see also **Strickland v. Washington**, 466 U.S. 668 (1984).