

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1759
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HERLINDA DOMINGUEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:93-CV-90-C
- - - - -
(May 17, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Herlinda Dominguez appeals the dismissal of her 28 U.S.C. § 2255 motion. The motion challenged the manner in which the district court applied the Sentencing Guidelines to calculate her sentence following her conviction for distribution of cocaine. The district court determined Dominguez's claim was not cognizable under section 2255. We affirm.

"[A] `collateral challenge may not do service for an appeal.'" United States v. Shaid, 937 F.2d 228, 231 (5th Cir.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

1991) (en banc) (quoting United States v. Frady, 456 U.S. 152, 168, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982)), cert. denied, 112 S. Ct. 978 (1992). Allegations of error not of constitutional or jurisdictional magnitude and not raised on direct appeal may not be asserted in a § 2255 motion, unless the defendant can show the error "could not have been raised on direct appeal, and if condoned, would result in a complete miscarriage of justice." Shaid, 937 F.2d at 232 n.7; United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. Unit A Sept. 1981). "A district court's technical application of the Guidelines does not give rise to a constitutional issue." United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

The issue Dominguez asserted in her § 2255 motion concerns only the district court's application of the Guidelines to compute her base offense level. She offers no explanation for her failure to file a direct appeal raising this issue. Thus, her claim is not cognizable under § 2255, and the district court correctly dismissed her motion. See id.

Dominguez also attempts to raise several additional issues related to the calculation of her sentence for the first time on appeal. Ordinarily, issues raised for the first time on appeal need not be considered. United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990). We note, however, that these claims simply involve the court's application of the Guidelines and are not cognizable under § 2255. See Vaughn, 955 F.2d at 368.

AFFIRMED.