

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 21, 2021

Lyle W. Cayce
Clerk

No. 20-60359
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JACK BENNY HALES,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:18-CR-28-3

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

In this out-of-time appeal, which was granted following a 28 U.S.C. § 2255 proceeding, Jack Benny Hales challenges the sentence imposed following his conviction for possessing methamphetamine with intent to distribute. Hales argues that his trial counsel rendered ineffective assistance

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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by failing to object to an offense level enhancement, which was assessed pursuant to U.S.S.G. § 2D1.1(b)(5) (2016) based on a finding that the methamphetamine involved in his offense was imported.

We initially note that the waiver provision in Hales's plea agreement does not bar raising an ineffective assistance claim on appeal. Nonetheless, we are unpersuaded that this is one of those rare cases in which the record is sufficiently developed to allow us to consider an ineffective assistance claim on direct appeal. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014). Accordingly, we deny the claim without prejudice to Hales's right to pursue it on collateral review.

AFFIRMED.