

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-4582**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN GONZALEZ PADRON,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:16-cr-00424-NCT-1)

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Submitted: April 19, 2022

Decided: May 27, 2022

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Before GREGORY, Chief Judge, MOTZ, Circuit Judge, and KEENAN, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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**ON BRIEF:** Benjamin D. Porter, MORROW PORTER VERMITSKY FOWLER & TAYLOR PLLC, Winston-Salem, North Carolina, for Appellant. Sandra J. Hairston, United States Attorney, Terry M. Meinecke, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Juan Gonzalez Padron appeals from his 87-month sentence entered pursuant to his guilty plea to possession with intent to distribute cocaine. On appeal, he asserts that his attorney provided ineffective assistance when he failed to object to Gonzalez Padron's firearm enhancement under U.S. Sentencing Guidelines Manual § 2D1.1(b)(1). Because this claim is not cognizable on direct appeal, we dismiss.

Claims of ineffective assistance are cognizable on direct appeal "only where the record conclusively establishes ineffective assistance." *United States v. Baptiste*, 596 F.3d 214, 216 n.1 (4th Cir. 2010). Generally, a defendant should instead raise ineffectiveness claims in a 28 U.S.C. § 2255 motion, to permit sufficient development of the record. *See Massaro v. United States*, 538 U.S. 500, 504-06 (2003).

Here, the record here does not establish, let alone conclusively so, that counsel's performance was deficient or that Gonzalez Padron was prejudiced as a result. The record is silent on counsel's reasons for not objecting to the presentence report, and it is speculative at best whether such an objection would have succeeded in lowering Gonzalez Padron's Guidelines range. Moreover, the record provides no information regarding the specific location of the gun found in Gonzalez Padron's room or its accessibility.

Because the record does not conclusively show ineffective assistance, we dismiss the appeal. We deny Gonzalez Padron's motion to expedite as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*