

United States Court of Appeals
Fifth Circuit

FILED

December 20, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10183
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIE CHARLES RUDD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:05-CR-133

Before DAVIS, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Willie Charles Rudd pleaded guilty to one count of being a felon in possession of a firearm. He now challenges the appeal waiver in his guilty plea agreement and argues that he received ineffective assistance of counsel. The Government has filed a motion to dismiss the appeal or for summary affirmance, or, in the alternative, for an extension of time.

Because Rudd's ineffective assistance claim falls within an exception to his appeal waiver, it is unnecessary for this court to address the validity of the waiver and we decline to do so.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We have held "that a claim of ineffective assistance of counsel generally cannot be addressed on direct appeal unless the claim has been presented to the district court; otherwise there is no opportunity for the development of an adequate record on the merits of that serious allegation." United States v. Navejar, 963 F.2d 732, 735 (5th Cir. 1992) (citing United States v. Higdon, 832 F.2d 312, 314 (5th Cir. 1987)). Rudd did not raise the claim below and record has not been developed on the issue. Therefore, we do not consider this assignment of error.

Rudd asserts in a footnote that "the three convictions upon which he was sentenced as an Armed Career Criminal were insufficient for such treatment." A "single conclusory sentence in a footnote is insufficient to raise [that] argument for review." United States v. Charles, No. 06-30324, ___ F.3d ___, ___ (5th Cir. Nov. 3, 2006) (citing Beazley v. Johnson, 242 F.3d 248, 270 (5th Cir. 2001)). Rudd has waived the argument.

The judgment of the district court is summarily affirmed. We do so without prejudice to Rudd's right to raise the issue of ineffective assistance of counsel in a proper proceeding under 28 U.S.C. § 2255. See United States v. Rodriguez, 582 F.2d 1015, 1016 (5th Cir. 1978).

AFFIRMED; MOTION GRANTED.