

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

F I L E D
July 22, 2010

No. 09-50441
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARTHUR CREED,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:08-CR-333-1

Before KING, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:*

Arthur Creed appeals his conviction and sentence for being a felon in possession of a firearm. Creed argues that he was deprived of the effective assistance of trial counsel because counsel introduced evidence establishing Creed's guilt. He contends that counsel's error failed to subject the prosecution's case to meaningful adversarial testing and that prejudice should be presumed under *United States v. Cronic*, 466 U.S. 648 (1984).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Creed's challenge to counsel's effective assistance will not be reviewed by this court. Generally, this court addresses claims on direct appeal of inadequate representation only in cases where the record is adequate to allow the court to consider the claim's merits. *United States v. Higdon*, 832 F.2d 312, 313-14 (5th Cir. 1987). In the instant case, the record is not sufficiently developed. Therefore, this court declines to consider this claim without prejudice to Creed's right to raise it in a 28 U.S.C. § 2255 motion. *See Massaro v. United States*, 538 U.S. 500, 502-06 (2003) (noting that habeas proceedings are the preferred method for raising an ineffective assistance of counsel claim).

Accordingly, the judgment of the district court is AFFIRMED.