

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

United States Court of Appeals
Fifth Circuit

FILED

January 11, 2011

Lyle W. Cayce
Clerk

No. 10-50171

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN ENRIQUE MORENO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:08-CR-1213-2

Before DAVIS, SMITH and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Juan Enrique Moreno appeals from his jury verdict conviction for conspiracy to possess with intent to distribute 100 kilograms or more of marijuana. His sole argument on appeal is that his trial counsel rendered ineffective assistance by failing to advise him to plead guilty and by failing to secure a plea bargain agreement with the Government. He seeks vacatur of his conviction and a new trial. Alternatively, he requests a remand so that an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 10-50171

evidentiary hearing can be conducted as to his ineffective-assistance-of-counsel claim.

As a general rule, this court will not consider an ineffective-assistance-of-counsel claim that was not raised in district court. *United States v. Higdon*, 832 F.2d 312, 313-14 (5th Cir. 1987). Moreover, the Supreme Court has emphasized that a 28 U.S.C. § 2255 motion is the preferred method for raising a claim of ineffective assistance of counsel. *Massaro v. United States*, 538 U.S. 500, 503-04 (2003). As the record for this case is not sufficiently developed to qualify for an exception to that general rule, we decline to consider Moreno's ineffective-assistance-of-counsel claim in this appeal without prejudice to his ability to raise this claim in a § 2255 motion. Also, in light of the Supreme Court's stated preference for resolution of such claims via a § 2255 motion, we deny Moreno's alternative request for a remand.

The judgment of the district court is AFFIRMED.