

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

No. 13-41250
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 15, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOHN MARK WHEELER,

Defendant-Appellant

Appeals from the United States District Court
for the Eastern District of Texas
USDC No. 4:12-CR-154-1

Before HIGGINBOTHAM, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

John Mark Wheeler appeals his guilty plea and sentence for possession of a firearm by a felon. Wheeler's challenge to an increase in his offense level is barred by an appeal waiver. *See United States v. Bond*, 414 F.3d 542, 544-46 & n.4 (5th Cir. 2005).

However, Wheeler also contends that his plea and the waiver are invalid due to ineffective assistance of counsel in the form of erroneous advice about

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 13-41250

the sentence Wheeler would receive. Such a claim of ineffective counsel is expressly preserved in the plea agreement. Nonetheless, we decline to address it in this direct appeal because the record is not sufficiently developed. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014), *cert. denied*, 2014 WL 2616172 (Oct. 6, 2014) (No. 13-10484). The claim may be brought in a motion under 28 U.S.C. § 2255. *See Massaro v. United States*, 538 U.S. 500, 504-06 (2003).

Because the issues Wheeler raises are either barred by the waiver or not suitable for resolution on direct appeal, the judgment is AFFIRMED. The Government's motion for summary affirmance is DENIED. The Government's motion for an extension of time to file an appeal brief is DENIED as unnecessary.