

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3105
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARVIN ALEXANDER BADGER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-170 (CR-92-191 "H"3)
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice. United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981).

Nonconstitutional claims that could have been raised on direct appeal, but were not, may not be asserted in a collateral proceeding. Id. Darwin Alexander Badger could have raised his

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

argument concerning the prospective application of the November 1992 amendments to U.S.S.G. § 3E1.1 on direct appeal, but he did not do so. His § 2255 motion does not present a constitutional issue. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

Further, the district court did not err by failing to take into consideration the pending amendments to § 3E1.1. See United States v. Crain, No. 92-3869 (5th Cir. June 22, 1993) (unpublished).

AFFIRMED.