

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-11036
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HOWARD LEE CARPENTER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:95-CV-744-A
- - - - -

August 21, 1996

Before KING, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:*

Howard Lee Carpenter, #13516-075, appeals the district court's dismissal of his 28 U.S.C. § 2255 motion. Carpenter's challenge to the fine portion of his sentence is not within the scope of § 2255 because it raises a nonconstitutional issue that could have been raised on direct appeal. United States v. Segler, 37 F.3d 1131, 1135 (5th Cir. 1994); United States v. Capua, 656 F.2d 1033, 1037 (5th Cir. 1981). Carpenter's

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

contention that his trial counsel failed to follow his direction to file a direct appeal will not be considered because it is raised for the first time in Carpenter's reply brief. See United States v. Prince, 868 F.2d 1379, 1386 (5th Cir.), cert. denied, 493 U.S. 932 (1989).

AFFIRMED.