

NOT PRECEDENTIAL

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2818

UNITED STATES OF AMERICA

vs.

JOHN DAVIS a/k/a John Davis-Bey

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

(D.C. Criminal No. 99-cr-00638)
District Judge: The Honorable Harvey Bartle, III

Submitted Under Third Circuit LAR 34.1(a)
April 19, 2002

BEFORE: NYGAARD, AMBRO, and KRAVITCH, Circuit Judges.

(Filed May 17, 2002)

OPINION OF THE COURT

NYGAARD, Circuit Judge.

Appellant, John Davis, argues on appeal that his counsel was ineffective for failing to request a downward adjustment under U.S.S.G. 3B1.3. He argues that he was a minor participant in the conspiracy. Appellant also argues that his counsel was ineffective for failing to object to a two-level upward adjustment for the possession and use of a special skill. Because both of these arguments raise issues of fact that must first be resolved by the District Court, we conclude that neither issue is ripe for appeal. *Government of the Virgin Islands v. Forte*, 806 F.2d 73, (3d Cir. 1986) (An appellant may not raise ineffective assistance of counsel in a direct appeal when there is an insufficient record for appellate review.) Accordingly, we will dismiss the appeal.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Richard L. Nygaard
Circuit Judge