

NOT PRECEDENTIAL

IN THE UNITED STATES COURT
OF APPEALS
FOR THE THIRD CIRCUIT

NO. 05-1377

UNITED STATES OF AMERICA

v.

CARLOS AGUIRRE
Appellant

On Appeal From the United States
District Court
For the District of New Jersey
(D.C. Crim. Action No. 04-cr-00496)
District Judge: Hon. Dickinson R. Debevoise

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 12, 2008

BEFORE: SLOVITER, SMITH and
STAPLETON, *Circuit Judges*

(Filed: February 13, 2008)

OPINION OF THE COURT

STAPLETON, Circuit Judge:

Appellant Carlos Aguirre pled guilty to using a telephone to facilitate a conspiracy to distribute cocaine. He was sentenced to 48 months of incarceration. He now appeals that sentence, arguing (1) that he received ineffective assistance of counsel during the sentencing phase of his case in the District Court, (2) that the District Court erred in declining to grant a departure from the Guideline range because of extraordinary family circumstances, and (3) that the District Court also erred in failing to grant a departure on the ground that his offense constituted aberrant behavior.

Aguirre's ineffective assistance of counsel claim was not raised in the District Court and, as a result, the record was not developed on the issues raised by that claim. In such situations, we decline to review ineffective assistance of counsel claims on direct appeal and insist that they be addressed initially in the trial court in a collateral review proceeding under 28 U.S.C. § 2255, *see, e.g., United States v. Haywood*, 155 F.3d 674, 678 (3d Cir. 1995).

We lack jurisdiction "to review discretionary decisions [of a sentencing court] to deny departures, unless for allegations of legal error." *United States v. Cooper*, 437 F.3d 324, 332 (3d Cir. 2006).

For the foregoing reasons, we will affirm the judgment of the District Court without prejudice to Aguirre pursuing his ineffective assistance of counsel claim in a proceeding under 28 U.S.C. § 2255.