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Opinions of the United  
States Court of Appeals  
for the Third Circuit

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5-17-2002

## USA v. Davis

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NOT PRECEDENTIAL

THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 01-2818

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UNITED STATES OF AMERICA

vs.

JOHN DAVIS a/k/a John Davis-Bey

Appellant.

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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

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

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

(Filed May 17, 2002)

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OPINION OF THE COURT

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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.

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TO THE CLERK:

Please file the foregoing opinion.

/s/ Richard L. Nygaard  
Circuit Judge