

August 20, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40017  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS RESENDEZ PAZ, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-99-CR-57-2  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges

BY THE COURT:

Jesus Resendez Paz, Jr. ("Resendez"), federal prisoner # 55494-079, has filed an appeal from the district court's denial of his motion for transcripts at the government's expense. Resendez moves in this court for transcripts and for the appointment of counsel.

Because Resendez does not have a 28 U.S.C. § 2255 motion, or any other action, pending in the district court, he is not entitled to transcripts or to appointed counsel. See Walker v. United States, 424 F.2d 278, 278-279 (5th Cir. 1970); Harless v. United States, 329 F.2d 397, 398-399 (5th Cir. 1964). For the same reasons, Resendez's appeal of the district court's denial of

transcripts is without an arguable basis and is frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Under Fifth Circuit Rule 42.2, an appeal will be dismissed if it appears to the court, upon hearing of "any interlocutory motion," that the appeal is frivolous and entirely without merit. 5TH CIR. R. 42.2. Accordingly, the appeal is DISMISSED.

MOTIONS DENIED; APPEAL DISMISSED.