

December 16, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50401
Conference Calendar

DANIEL ISIDRO SOTELO-LOPEZ,

Petitioner-Appellant,

versus

ROBERT M. TAPIA, Warden of Federal Correctional
Institution - La Tuna,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:04-CV-8-DB

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Daniel Isidro Sotelo-Lopez (Sotelo), federal inmate # 01763-180, sought habeas corpus relief from his conviction and sentence for marijuana and cocaine offenses that violated 21 U.S.C. §§ 841 and 846. Sotelo appeals the district court's denial of his motion for reconsideration of its order construing Sotelo's application for habeas relief as a 28 U.S.C. § 2255 motion. The order that Sotelo asked the district court to reconsider is not a final judgment. See Silver Star Enters., Inc., v. M/V SARACCA,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

19 F.3d 1008, 1013 (5th Cir. 1994). Therefore, the district court's denial of Sotelo's motion for reconsideration is non-appealable. See 28 U.S.C. § 1291.

Accordingly, Sotelo's appeal is DISMISSED for lack of jurisdiction.