

April 17, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50843
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NELSON AGUSTIN GONZALEZ,
also known as Luis Roman, also known as El Cubano,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:98-CR-27-1

Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Nelson Agustin Gonzalez, federal prisoner # 03792-131, moves for leave to proceed in forma pauperis (IFP) on appeal and has filed a brief in support of his appeal. Relying on United States v. Booker, 543 U.S. 220 (2005), Gonzalez seeks to challenge the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce the sentence he received for engaging in a continuing criminal enterprise, possession of marijuana with the intent to distribute, money laundering, and being a felon in possession of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a firearm. The district court also denied Gonzalez's motion for leave to proceed IFP and certified that an appeal would not be taken in good faith.

Gonzalez's IFP motion is construed as a challenge to the district court's certification. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). He has failed to show that his appeal involves "legal points arguable on their merits (and therefore not frivolous)." Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks omitted); see § 3582; United States v. Shaw, 30 F.3d 26, 29 (5th Cir. 1994). Accordingly, the motion for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED as frivolous. See Baugh, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2. Gonzalez is WARNED that the filing or prosecution of frivolous appeals in the future will subject him to sanctions.