

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10041
USDC No. 3:95-CV-950-H

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CESAR OMAR MARTINEZ,
a/k/a Jose Sanchez,
a/k/a La Cotorra,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
- - - - -

January 15, 1997

Before HIGGINBOTHAM, WIENER and BENAVIDES, Circuit Judges.

PER CURIAM:*

Cesar Martinez (federal inmate #23582-077) has applied to this court for leave to appeal in forma pauperis (IFP) from the district court's denial of his 28 U.S.C. § 2255 motion to vacate. Martinez contends that he is entitled to relief on grounds (1) of incorrect applications of the Sentencing Guidelines, and (2) that his guilty plea was induced by his counsel's false promise and

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

incorrect advice concerning the sentence he would receive.

IT IS ORDERED that leave to appeal IFP is DENIED, because Martinez's appeal lacks arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, IT IS FURTHER ORDERED that the appeal is DISMISSED. See 5th Cir. R. 42.2.

If this court were to hold that a certificate of appealability (COA) is required in a case such as this, COA would be denied. See 28 U.S.C. § 2253(c).

IFP DENIED; APPEAL DISMISSED.