

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20888
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISRAEL ESPERICUETA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR H-90-428-12
- - - - -

April 15, 1997

Before REAVLEY, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Israel Espericueta, federal prisoner No. 59164-079, appeals the denial of his motion to modify his sentence under 18 U.S.C. § 3582(c)(2) based on an allegedly erroneous application of the sentencing guidelines. As Espericueta concedes, a § 3582(c)(2) motion is not the appropriate vehicle for raising this issue because it is not based on a retroactive application of a subsequently lowered guideline range. United States v. Shaw, 30

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

F.3d 26, 29 (5th Cir. 1994).

Contrary to Espericueta's assertion, the district court could not have entertained his claims by construing them as a successive motion under 28 U.S.C. § 2255, because the Antiterrorism and Effective Death Penalty Act of 1996 requires that this court certify such a successive motion before it may be filed in the district court. See 28 U.S.C. § 2244(b)(3)(A).

APPEAL DISMISSED. 5th Cir. R. 42.2.