

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-31160
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARCOS GILBERTO LOPEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 94-CR-20022

July 8, 1997

Before DAVIS, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:*

Arcos Gilberto Lopez, a federal prisoner (# 32794-019), appeals from the district court's denial of his motion to reconsider the court's denial of his "Emergency Motion for Specific Performance of Plea Agreement," which he filed almost 20 months after he pleaded guilty to conspiracy to escape from a federal correctional facility. Lopez's "Emergency Motion" was "unauthorized" because the relief he sought was not available under any federal statute or rule providing for postconviction relief. See United States v. Early, 27 F.3d 140, 141-42 (5th Cir. 1994).

* Pursuant to 5TH Cir. R. 47.5 the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH Cir. R. 47.5.

Relief was not available to Lopez under Fed. R. Crim. P. 35, 18 U.S.C. § 3742, 18 U.S.C. § 3582(c)(2), or 28 U.S.C. § 2255. See id.; § 2255. Although the district court denied Lopez’s motion on the merits, it should have denied the motion for lack of jurisdiction. See Early, 27 F.3d at 142. However, this court may affirm on the alternative ground that Lopez’s “Emergency Motion” was meritless, in that the Government did not breach the plea agreement with Lopez. See id.

AFFIRMED.