

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50079  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGELIO NEVAREZ-BURCIAGA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-91-CR-303  
- - - - -  
February 18, 1997

Before JONES, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Appellant Rogelio Nevarez-Burciaga appeals from a denial of his motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255. Appellant's claims concerning the district court's technical application of the Sentencing Guidelines do not give rise to a constitutional claim. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). Since appellant did not raise these issues on direct appeal, they may not be raised in a collateral proceeding. See United States v. Capua, 656 F.2d

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

1033, 1037 (5th Cir. 1981). Appellant did not receive ineffective assistance of counsel because he did not show prejudice arising from the failure to raise these issues on direct appeal. See Strickland v. Washington, 466 U.S. 6687, 667 (1984).

Nevarez-Burciaga filed a motion to strike appellee's brief for being untimely. The record was not filed until September 11, 1996. The Government was sent a briefing notice on September 12, 1996. The Government's brief was filed 33 days later on October 15, 1996. See Fed. R. App. P. 31(a); 5th Cir. R. 31 I.O.P. The motion is DENIED.

AFFIRMED.