

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 97-41155  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YOLANDA RIVERA,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-82-CR-142  
- - - - -

June 16, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

Yolanda Rivera appeals the district court's dismissal of her request for leave to file motion for new trial. The Government's motion for leave to file its brief one day out of time is GRANTED. The district court lacked authority to grant a motion for new trial or to *sua sponte* order a new trial. Fed. R. Crim. P. 32(d) (applicable to offenses committed prior to 1987); Carlisle v. United States, 116 S. Ct. 1460, 1464 (1996); United

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 97-41155

-2-

States v. Smith, 331 U.S. 469, 473-75 (1947). The district court

did not abuse its discretion in dismissing Rivera's request for leave to file a motion for new trial.

This appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.