

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40685
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NOEL RODRIGUEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-95-CV-26
- - - - -

May 21, 1999

Before KING, Chief Judge, HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Noel Rodriguez, federal prisoner # 52254-079, appeals the district court's dismissal of his 28 U.S.C. § 2255 motion. Rodriguez argues that his attorney was ineffective because he failed to object to the career-offender enhancement to Rodriguez's drug-conspiracy sentence and to the presentence report's consideration of a prior misdemeanor offense when determining Rodriguez's criminal history category.

The inapplicability of the 1990 Sentencing Guidelines

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

career-offender provision to Rodriguez's drug-conspiracy conviction was not addressed by this circuit until 1994, three years after Rodriguez's sentence. See United States v. Bellazerius, 24 F.3d 698, 701-02 (5th Cir. 1994). Rodriguez's attorney was not ineffective for failing to anticipate new developments in the law. See Lucas v. Johnson, 132 F.3d 1069, 1078-79 (5th Cir. 1998). Furthermore, given that his criminal history category would have been the same regardless of a successful objection to the consideration of Rodriguez's prior misdemeanor offense, Rodriguez cannot show prejudice with respect to his ineffective-assistance-of-counsel claim based on the presentence report's consideration of his prior misdemeanor offense. See United States v. Seyfert, 67 F.3d 544, 548-49 (5th Cir. 1995).

AFFIRMED.