

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40755
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODRIGO DE JESUS ZAPATA-URIBE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CV-416
- - - - -

October 22, 1998

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Rodrigo de Jesus Zapata-Uribe, federal prisoner # 46120-079, has applied for a certificate of appealability ("COA") to appeal from the district court's denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Zapata-Uribe argues that his counsel was ineffective for failing to object to the denial of a downward adjustment for acceptance of responsibility and for failing to object to the increase for his leadership role in the offense.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Zapata-Uribe filed his § 2255 motion in 1994, prior to the April 24, 1996, effective date of the Antiterrorism and Effective Death Penalty Act, he is not required to obtain a COA to proceed with his appeal. Lindh v. Murphy, 117 S. Ct. 2059, 2067-68 (1997); United States v. Carter, 117 F.3d 262, 264 (5th Cir. 1997). No further briefing is necessary to decide the appeal. Groendyke Transport, Inc. v. Davis, 406 F.2d 1158, 1162 (5th Cir. 1969).

Essentially for reasons adopted by the district court, we hold that Zapata-Uribe has failed to present a nonfrivolous issue on appeal. United States v. Zapata-Uribe, No. H-98-CV-416 (S.D. May 15, 1998). Because Zapata-Uribe's appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

COA DENIED AS UNNECESSARY; APPEAL DISMISSED.