

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 00-41390  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HORACIO GARCIA-CASTRO,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-00-CV-97  
USDC No. B-97-CR-490-1  
- - - - -

December 27, 2001

Before JONES, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Horacio Garcia-Castro ("Garcia"), federal prisoner # 77632-079, appeals from the district court's denial of his motion to vacate, set aside, or correct judgment pursuant to 28 U.S.C. § 2255. Although Garcia identifies three issues on appeal, the only issue properly before the court is the issue on which COA was granted: whether the attorney's recommendation that the Government's evidence was insufficient to prove his guilt beyond a reasonable doubt was professionally reasonable. See Lackey v.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Johnson, 116 F.3d 149, 151-52 (5th Cir. 1997); see also United States v. Kimler, 150 F.3d 429, 431 (5th Cir. 1998).

After a review of the entire record and judging counsel's performance without benefit of hindsight, see Moreland v. Scott, 175 F.3d 347, 50 (5th Cir. 1999), this court cannot say that counsel's recommendation was professionally unreasonable. Accordingly, the judgment of the district court is **AFFIRMED**.