

April 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-51055
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTURO JAIMES-JAIMES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-99-CR-155-All-JN

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Arturo Jaimes-Jaimes (Jaimes), federal prisoner No. 95190-080, has appealed the district court's denial of his "Motion for Downward Departure Based on Post-Conviction Rehabilitation and Alien Status." He contends that the district court had jurisdiction to reduce his sentence pursuant to United States v. Galante, 111 F.3d 1029, 1034 (2d Cir. 1997) and other cases which have held that a district court may consider post-conviction

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

rehabilitation in determining whether to grant a downward departure.

The district court is prohibited from modifying a term of imprisonment once it has been imposed except in certain limited circumstances. 18 U.S.C. § 3582(c). Jaimes' post-conviction motion for downward departure does not fall under any provision of 18 U.S.C. § 3582(c) and, thus, was unauthorized and without a jurisdictional basis. See United States v. Early, 27 F.3d 140, 141-42 (5th Cir. 1994). The appeal is without arguable merit. Consequently, it is DISMISSED AS FRIVOLOUS. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. Jaimes is WARNED that future frivolous appeals may result in the imposition of sanctions.

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.