

May 2, 2003

Charles R. Fulbruge III
Clerk

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 02-51245
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OCTAVIO RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. P-00-CR-133-2

Before JONES, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

Octavio Rodriguez, federal prisoner # 05119-180, 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 should have reduced his sentence based on his "excellent" post-conviction rehabilitation efforts and the fact that his alien status makes him ineligible for certain prison programs.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court is prohibited from modifying a term of imprisonment once it has been imposed except in certain limited circumstances. See 18 U.S.C. § 3582(c). Rodriguez's post-conviction motion for downward departure does not fall under any of these circumstances; thus, it 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 and is DISMISSED AS FRIVOLOUS. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. Rodriguez is WARNED that future frivolous appeals may result in the imposition of sanctions.

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.