

June 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-51384
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE CASTELAN, JR, also known as Jose Carmen Castelan-Carbajal,
also known as Peter Garcia, also known as Jose Catellan,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-01-CR-109-ALL-JN

Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Jose Castelan, federal prisoner # 79424-080, appeals the district court's denial of his post-conviction motion for a reduction of his sentence or downward departure from the guidelines range based on his cultural assimilation. Castelan relies on United States v. Rodriguez-Montelongo, 263 F.3d 429 (5th Cir. 2001), which was issued after he was sentenced and held for the first time in a published opinion that cultural

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

assimilation is a "permissible basis for downward departure" under U.S.S.G. § 5K2.0.

This court has a continuing duty to consider, sua sponte if necessary, the basis of the district court's jurisdiction. Solsona v. Warden, F.C.I., 821 F.2d 1129, 1132 n.2. 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). Castelan's post-conviction motion for a sentence reduction or 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). Although the district court considered the motion on its merits, it should have denied the motion for lack of jurisdiction. See id. at 142. On that alternative basis, the district court's order is

AFFIRMED.