

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

United States Court of Appeals  
Fifth Circuit

**FILED**

March 11, 2011

Lyle W. Cayce  
Clerk

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No. 10-50103  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

WILLIE LOUIS MACK,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:00-CR-172-1

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Before JOLLY, GARZA, and STEWART, Circuit Judges.

PER CURIAM:\*

In October 2000, Willie Louis Mack, federal prisoner # 02948-180, was convicted by jury verdict of conspiring to possess with intent to distribute 100 kilograms or more of marijuana and possessing with intent to distribute 100 kilograms or more of marijuana. He objected to his presentence report (PSR) on the ground that it attributed certain conduct and drug amounts to him that had been revealed during a proffer session with the prosecution. At sentencing, the district court resolved the objection by stating that it would not consider the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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information derived from Mack's statements to the Government during that session and that it would sentence him based solely upon the specific offenses for which he had been found guilty.

After his judgment of conviction was affirmed and his 28 U.S.C. § 2255 was denied, Mack sent the district court two letters in which he requested an order redacting from his PSR the information revealed during the proffer session. Mack alleged that he sought the redaction because the Bureau of Prisons (BOP) was utilizing that information for purposes of determining his prison classification status. The district court construed those letters as a motion to order redaction of Mack's PSR and denied that motion as moot after determining that Mack had received all of the benefits that he was due from the court's ruling on his PSR objection at sentencing.

Mack has filed in this court a motion for leave to proceed in forma pauperis (IFP) on appeal. He first argues that the district court's recharacterization of his letters as a motion to order redaction of his PSR violated the Supreme Court's holding in *Castro v. United States*, 540 U.S. 375, 377 (2003). Because the district court did not construe Mack's letters to be his first § 2255 motion, there was no *Castro* violation in this case.

The remainder of Mack's argument regards the underlying merits of his construed motion to order redaction of his PSR. Mack has failed to show any error in the district court's denial of his motion to order redaction of his PSR. His appeal is without arguable merit and is thus frivolous. *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, Mack's request for leave to proceed IFP is denied, and the appeal is dismissed. *See* 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.