

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

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2011

Lyle W. Cayce
Clerk

No.10-50496
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOHNNY GARCIA-ESPARZA, also known as Gira,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:08-CV-390

Before JOLLY, GARZA and STEWART, Circuit Judges.

PER CURIAM:*

Following the district court's denial of his 28 U.S.C. § 2255 motion challenging his conviction on charges related to his participation in a criminal organization, Johnny Garcia-Esparza, federal prisoner # 43813-080, moves this court for authorization to proceed in forma pauperis (IFP) on appeal. The district court sentenced Garcia-Esparza to 660 months of imprisonment on one count, to run concurrently with 240 months of imprisonment on each of several

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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other counts, and to run consecutively to a 60-month term of imprisonment on one final count.

Garcia-Esparza asserts that he is impoverished and reurges a number of arguments this court has previously considered and rejected. He additionally avers that his trial counsel provided ineffective assistance by failing to challenge the trial court's alleged non-adherence to its stated rule excluding witnesses from the court room except when testifying. Because Garcia-Esparza has raised no "legal points arguable on their merits (and therefore not frivolous)," *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted); he has failed to show that the district court erred in certifying that his appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

IT IS ORDERED that Garcia-Esparza's IFP motion is DENIED. *See Howard*, 707 F.2d at 219-20. His appeal is DISMISSED as frivolous. *See* 5th Cir. R. 42.2; *Baugh*, 117 F.3d at 202 n.24.