

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

United States Court of Appeals  
Fifth Circuit

**FILED**

November 30, 2011

Lyle W. Cayce  
Clerk

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No. 11-60035  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SEABRON MACKUNDRA MILLENDER, also known as Packy,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 1:10-CV-49

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Before BENAVIDES, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Seabron Mackundra Millender, federal prisoner number # 15090-043, pleaded guilty to conspiracy to possess with intent to distribute a controlled substance. No direct appeal was filed; however, the district court granted Millender's pro se 28 U.S.C. § 2255 motion, in part, permitting an out-of-time direct appeal, based on defense counsel's failure to file an appeal. The court additionally granted a certificate of appealability (COA) on the same ground but denied Millender leave to proceed in forma pauperis (IFP).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-60035

Millender now seeks a COA on additional issues, namely that (1) counsel provided ineffective assistance by failing to argue the appropriate sentencing guidelines enhancements; (2) his conviction was obtained in violation of due process; (3) his conviction was obtained in violation of the Confrontation Clause; and (4) the Government breached his plea agreement. He also seeks leave to proceed IFP and requests a COA to appeal the issue that formed the basis of the district court's orders granting both an out-of-time direct appeal and a COA.

Because the district court has granted an out-of-time direct appeal and reentered the original criminal judgment, Millender's instant § 2255 appeal is DISMISSED. *See Mack v. Smith*, 659 F.2d 23, 25-26 (5th Cir. Unit A 1981). We express no opinion on the claims Millender has raised. *See id.* In light of the foregoing, Millender's COA request is DENIED as unnecessary. His motion to proceed IFP is likewise DENIED.