

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

No. 15-41487
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 4, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DARIO GARCIA-VILAFRANCA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:13-CR-399-1

Before OWEN, ELROD, and COSTA, Circuit Judges.

PER CURIAM:*

Dario Garcia-Villafranca, federal prisoner # 41913-379, moves for leave to proceed in forma pauperis (IFP) on appeal. He challenges the district court's denial of his postconviction motion to compel his trial attorney and the Government to provide him with the evidence used against him in his guilty plea proceedings. The district court denied the motion because it was without jurisdiction to consider the motion; it did not possess the requested evidence;

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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and Garcia-Villafranca failed to show that good cause existed for the production of the evidence given that he pleaded guilty and was sentenced more than two years previously and had failed to show how the requested evidence affected the validity of his conviction.

By moving to proceed IFP, Garcia-Villafranca is challenging the district court's certification that his appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into an appellant's good faith "is limited to whether the appeal involves 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 citation omitted). We may dismiss the appeal sua sponte under 5th Circuit Rule 42.2 if it is frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

Garcia-Villafranca has failed to demonstrate his appeal presents a nonfrivolous issue. His reliance on the federal rules does not demonstrate the district court's jurisdiction or counter its lack of good cause finding. Furthermore, his request for disclosure does not undermine his guilty plea or address the fact that he pleaded guilty more than one year prior to the filing of his motion. *See United States v. Contreras*, 272 F. App'x 344, 345 (5th Cir. 2008).

This appeal fails to present a legal issue that is arguable on its merits and is, therefore, frivolous. *See Howard*, 707 F.2d at 219-20. Accordingly, the motion to proceed IFP on appeal is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.