

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1953  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE ARTEAGA GARCIA,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Northern District of Texas  
(5:92-CV-091-C (5:89-CR-23))

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( May 25, 1993 )

Before POLITZ, Chief Judge, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:\*

George Arteaga Garcia appeals the denial of his third motion for post-conviction relief advancing several claims. None supports relief, some are successive, others are abusive, and some are procedurally defaulted. We place Garcia and the government on notice that should any future motions be filed, procedural bars are

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

to be timely advanced and resolved. As regards the motion at bar, we find no error in the disposition of those claims on which we reach the merits and conclude that all others are waived.

The first issue Garcia raises in this 28 U.S.C. § 2255 motion is that the sentencing court punished him twice for the same conduct by imposing consecutive sentences for violations of 18 U.S.C. § 287, filing a false claim for a federal income tax refund, and 18 U.S.C. § 1510, obstruction of the criminal investigation of the false claim. As we held in dismissing a prior section 2255 motion by Garcia, the conduct underlying each of the offenses differs.<sup>1</sup> Accordingly, there was no double-counting in the imposition of sentence.

Garcia's second complaint is that the imposition of supervised release for his violation of 18 U.S.C. § 1510 was a retroactive application of the Sentencing Guidelines and hence a violation of the *ex post facto* clause of Article I, Section 9, of the Constitution. Such a violation occurs when a penal law criminalizes previously innocent conduct or enhances punishment for a crime after it has been committed.<sup>2</sup> Supervised release was enacted as part of the Sentencing Guidelines, effective November 1, 1987. The conduct for which the court sentenced Garcia to supervised release occurred on November 1, 1988, when Garcia offered the person in whose name he had submitted a false tax

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<sup>1</sup> No. 91-1620 (Apr. 23, 1992).

<sup>2</sup> **Collins v. Youngblood**, 497 U.S. 37 (1990).

return an acre of land if he would give the government investigators false information. This conduct obviously occurred after the enactment of the law creating supervised release. That the government was investigating conduct occurring before November 1, 1987 is of no moment. There was no *ex post facto* violation.

Garcia also contends that the delay of his indictment until after his release from prison on unrelated charges contravened his right to a speedy trial. A defendant who pleads guilty, as did Garcia, waives all nonjurisdictional defects arising prior to the guilty plea, including speedy trial violations.<sup>3</sup> This assignment of error is waived.

Finally, Garcia complains that his prosecution for the false tax refund claim violates the constitutional guarantee against double jeopardy. We are not persuaded. Contrary to Garcia's representation, the government could not have agreed to dismiss that charge in exchange for his plea of guilty to prior offenses because Garcia did not commit the instant offense until after he was sentenced for the prior offenses. Nor did jeopardy attach with the government's declination of prosecution during Garcia's incarceration for his prior offenses.<sup>4</sup> The subsequent prosecution

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<sup>3</sup> **United States v. Bell**, 966 F.2d 914 (5th Cir. 1992).

<sup>4</sup> **Fransaw v. Lynaugh**, 810 F.2d 518 (5th Cir.) (jeopardy attaches in a jury trial when the jury is empaneled and sworn, in a plea-bargaining context when the guilty plea is accepted, and in a bench trial when the court begins to hear evidence), cert. denied, 483 U.S. 1008 (1987).

did not place Garcia in double jeopardy.

Garcia's motion also asserted that the sentencing court had improperly departed from the Sentencing Guidelines and that he should be given jail time credit under 18 U.S.C. § 3585. Those issues are not briefed on appeal and are thus waived.<sup>5</sup>

AFFIRMED.

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<sup>5</sup> **Hobbs v. Hawkins**, 968 F.2d 471 (5th Cir. 1992).