

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

S)))))))))Q

No. 92-2722
Summary Calendar
S)))))))))Q

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

versus

SIGIFREDO SALINAS,

Defendant-Appellant.

S)))))))))Q

Appeal from the United States District Court for the
Southern District of Texas
(CA H 92 2302)
S)))))))))Q

April 16, 1993

Before GARWOOD, JONES and EMILIO M. GARZA, Circuit Judges.*

PER CURIAM:

Appellant Sigifredo Salinas (Salinas) pleaded guilty to possession with intent to distribute cocaine and aiding and abetting in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), and 18 U.S.C. § 2. Although the statute of conviction required a mandatory minimum sentence of ten years, as part of the plea

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

agreement, the government filed a motion under U.S.S.G. § 5K1.1 for substantial assistance and recommended a sentence of sixty months. On April 24, 1991, the district court sentenced Salinas to sixty months' imprisonment.

Salinas did not file a direct appeal, but instead filed on July 15, 1992, a motion under 28 U.S.C. § 2255 challenging his sentence, in which he argued that the district court should have granted him reductions in his offense level for acceptance of responsibility and minimal participation. The government filed a motion for summary judgment, which the district court granted, holding that Salinas' motion raised nonconstitutional issues that could have been raised on direct appeal.

Salinas filed a timely notice of appeal from the denial of his section 2255 motion.

Salinas' appeal of the denial of his section 2255 motion challenges only the district court's rulings on the sentencing guidelines issues of acceptance of responsibility and minimal participation.

"Relief under 28 U.S.C.A. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice." *United States v. Vaughn*, 955 F.2d 367, 368 (5th Cir. 1992). Salinas was sentenced below the statutory maximum and did not appeal his sentence. His present complaints could have been raised on direct appeal. "A district court's technical application of the

Guidelines does not give rise to a constitutional issue." *Id.* Salinas' claim is not cognizable under section 2255, and his appeal is dismissed as frivolous. See Fed. R. App. P. 42.2.

APPEAL DISMISSED AS FRIVOLOUS