IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2372
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS LERMA,

Defendant-Appellant.

- - - - - - - - - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-93-525 (CR-H-89-365)
- - - - - - - - - - - -
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Lerma argues that he is entitled to § 2255 relief because the district court incorrectly calculated his sentence for counts 1 and 2. "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). A district court's technical application of the sentencing

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

guidelines is not of constitutional dimension. Id. A nonconstitutional claim that could have been raised on direct appeal, but was not, may not be raised in a collateral proceeding. United States v. Shaid, 937 F.2d 228, 232 n.7 (5th Cir. 1991), (en banc), cert. denied, 112 S.Ct. 978 (1992).

Lerma's argument that the district court improperly calculated his sentence does not raise a constitutional claim that could not have been resolved on direct appeal. Moreover, the district court, after considering the merits of Lerma's claim, determined, and an independent review of the record reveals, that any error in the calculation of counts 1 and 2 was harmless because the sentence he received on each of counts 4, 6, and 50-58 was equal to the sentence imposed for counts 1 and 2. Accordingly, Lerma has not been subjected to a complete miscarriage of justice by the denial of § 2255 relief. See id. ("complete miscarriage of justice" is proper standard for analyzing non-constitutional § 2255 issues that could not have been raised on direct appeal). The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-220 (5th Cir. 1993). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.