

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5171
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE GARCIA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:93-CV-154;1:90-CR-38-10
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Jose Garcia appeals the denial of his 28 U.S.C. § 2255 motion. He argues that the district court relied upon erroneous information contained in the PSR and that he received ineffective assistance of counsel because his counsel failed to correct these factual inaccuracies. He also raises numerous challenges to the district court's application of the Sentencing Guidelines.

None of these arguments, however, was raised in Garcia's § 2255 motion. In his motion before the district court, Garcia challenged only the sufficiency of the evidence to support his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

convictions, arguing that the Government failed to prove that he possessed or conspired to possess marijuana, and his appointed counsel's failure to raise the sufficiency issue on direct appeal.

Because none of the issues raised by Garcia in his appellate brief was presented to the district court in his § 2255 motion, this Court is precluded from considering them on appeal. United States v. Carvajal, 989 F.2d 170, 170 (5th Cir. 1993); United States v. Armstrong, 951 F.2d 626, 630 (5th Cir. 1992). To the extent that Garcia's brief challenges the district court's denial of his motion on sufficiency grounds, this Court held, on Garcia's direct appeal, that "[t]here was ample admissible evidence to support the convictions for both conspiracy and possession of marijuana with intent to distribute." United States v. Ramirez, 963 F.2d 693, 702 (5th Cir.), cert. denied, 113 S.Ct. 388 (1992). "[I]ssues raised and disposed of in a previous appeal from an original judgment of conviction are not considered in § 2255 Motions." United States v. Kalish, 780 F.2d 506, 508 (5th Cir.), cert. denied, 476 U.S. 1118 (1986).

The appeal is DISMISSED as frivolous.