

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7130  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE LUIS MORENO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-M-92-197(CR-90-00310-01)  
- - - - -

August 20, 1993

Before JOLLY, JONES, and DUHE, Circuit Judges.

PER CURIAM:\*

Jose Luis Moreno entered a guilty plea to the conspiracy to possess with intent to distribute marijuana in exchange for the Government limiting its proof to 59 kilograms of marijuana. A presentence investigation report (PSR) was prepared and Moreno objected. These objections were overruled, but Moreno did not pursue a direct appeal of his conviction or sentence.

Moreno filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. He subsequently amended this

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

motion to reflect his objections to the PSR: 1) that the district court erred in enhancing his offense level for use of a firearm; and 2) that the district court erred in not reducing his offense level for his small role in the conspiracy. The motion was denied by the district court.

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. Nonconstitutional claims that could have been raised on direct appeal, but were not, may not be asserted in a collateral proceeding. [The defendant] was sentenced within the Guideline range and did not appeal the sentence. A district court's technical application of the Guidelines does not give rise to a constitutional issue.

United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992) (citations omitted). The relevant circumstances surrounding Moreno's case are identical to those in Vaughn. The district court's dismissal of the § 2255 motion was correct as Moreno's claims are not cognizable in this habeas proceeding. Id.; see also, United States v. Perez, 952 F.2d 908, 909-10 (5th Cir. 1992). Therefore, this appeal is frivolous and entirely without merit.

APPEAL DISMISSED. See 5th Cir. R. 42.2.