

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8300  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO GONZALEZ-HERNANDEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-87-CR-48(2)

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October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

Francisco Gonzalez-Hernandez filed a motion that he characterized as arising under Fed. R. Civ. P. 60(b). He sought to vacate his criminal judgment arguing that the prosecution obtained his conviction through a fraud on the court. When a defendant files a Rule 60(b) motion to vacate a criminal judgment, the motion is properly treated as a motion under 28 U.S.C. § 2255. See Grene v. United States, 448 F.2d 720, 720-21 (5th Cir. 1971) (rule 60(b) motion construed as an application

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

for a writ of error coram nobis); United States v. Reyes, 945 F.2d 862, 864 (5th Cir. 1991) (rule 60(b) motion construed as a motion for a writ of audita querela). Gonzalez-Hernandez was barred from filing another § 2255 motion without leave of court. He did not conform to the district court's order. The judgment of the district court is AFFIRMED.