

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10773
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BARBARA KAY FOWLER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:94-CV-1073-R (3:91-CR-0149-R)

- - - - -
(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM, and DeMOSS,
Circuit Judges.

PER CURIAM:*

IT IS ORDERED that Barbara Kay Fowler's motion for leave to proceed in forma pauperis is DENIED. Fowler has not shown that she will present a nonfrivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). Because the appeal is frivolous, it is DISMISSED.

A defendant may waive her right to post-conviction relief. United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994). As part of her plea agreement Fowler waived "any right to pursue any

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appeal or post-conviction writs from any sentence imposed under the Sentencing Guidelines if that sentence is within, or below, the Guideline range as determined by the Court." Fowler was sentenced at the lowest end of her guideline range and does not challenge the validity of the plea agreement or the post-conviction relief waiver. She is bound by her plea agreement. See United States v. Portillo, 18 F.3d 290, 292-93 (5th Cir.), cert. denied, 115 S. Ct. 244 (1994). To the extent that Fowler contends ineffective assistance of counsel may not fall under the ambit of her appeal waiver, the issue is nonetheless without merit. Counsel cannot be considered deficient for failing to raise claims knowingly and voluntarily waived in the process of plea bargaining. See Wilkes, 20 F.3d at 653.

Appeal DISMISSED; motion for appointment of counsel DENIED. See Schwander v. Blackburn, 750 F.2d 494, 502 (5th Cir. 1985).