

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-11142  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE LUIS FLORES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:93-CV-066 (3:92-CR-8-R)

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(May 11, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:\*

Jose Luis Flores' motion to proceed in forma pauperis on appeal from the denial of his motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence is DENIED. Flores has not shown that counsel rendered ineffective assistance at sentencing. See Strickland v. Washington, 466 U.S. 668, 687 (1984); Spriggs v. Collins, 993 F.2d 85, 88 (1993).

Flores' mere assertion that he could not produce the negotiated two kilograms of cocaine, thus counsel should have objected to the PSR, is insufficient to support his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

ineffectiveness claim. See U.S.S.G. § 2D1.4, comment. (n.1) (as cross-referenced by U.S.S.G. § 2D1.1, comment. (n.12)). Flores has not provided factual support for his assertion that there was an issue whether he could produce the additional two kilograms or that counsel was aware of the issue. Thus, he has not overcome the presumption that counsel's performance was reasonable. Even if counsel had made errors, Flores has not shown that, but for the errors, there is a reasonable probability that he would have received a significantly less sentence. See Spriggs, 993 F.2d at 90. Because Flores has not demonstrated that counsel was ineffective at sentencing, he cannot show that counsel's failure to seek review of the sentence under 18 U.S.C. § 3742 was unreasonable or that he was prejudiced. There is no merit to his claim.

Flores' claim that counsel was ineffective in failing to object to the five-year consecutive sentence for using and carrying a firearm during a drug trafficking offense is not properly before this court. Flores stated this claim as a sentencing issue in the district court, and he identified it as part of his ineffective-assistance-of-counsel claim. But he did not argue the issue in the body of his memorandum, and the district court did not address the claim. This court need not address issues not considered by the district court. "[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

On appeal, Flores can present no legal points arguable on their merits, and the appeal from the denial of his motion to vacate, set aside, or correct his sentence is frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. Rule 42.2.