

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20318

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DIEGO FERNANDO MEJIA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-94-855; (CR-H-91-197-3)

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(October 25, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

EDITH H. JONES, Circuit Judge:\*

Diego Fernando Mejia has moved this court for in forma pauperis status to appeal the district court's order dismissing his motion under 28 U.S.C. § 2255. Contrary to the prescribed practice, the district court did not state reasons for denying Mejia's motion. United States v. Daly, 823 F.2d 871, 872 (5th Cir. 1987). "Such findings are necessary unless the record conclusively shows that the petitioner is entitled to no relief." Id. (internal

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

quotation and citation omitted). Nevertheless, we are able to resolve some of petitioner's claims on appeal.

Mejia makes numerous challenges to the sentence imposed by the district court that do not fall within the narrow ambit of § 2255 review. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). Accordingly, we do not address his contentions that the district court improperly determined the applicable offense level, sentenced him based on erroneous information contained in the PSR and in violation of Fed. R. Crim. P. 32, and erred in not departing downward. See Vaughn, 955 F.2d at 368; see also United States v. Weintraub, 871 F.2d 1257, 1266 (5th Cir. 1989) (violations of Rule 32 are not cognizable for the first time in a § 2255 proceeding).

Mejia also contends that he received ineffective assistance of counsel at trial and at sentencing. In this court, as in the district court, he states no facts upon which the claim is based. Apparently, he thought he was entitled to review his trial records before having to explain the factual basis for his claim. This is incorrect. See Rule 2, Rules Following Section 2255 Habeas Appeals in District Courts. Because petitioner is pro se, however, we vacate and remand the district court's judgment denying relief with instructions to grant Mejia an opportunity to amend his § 2255 petition to state the facts underlying his ineffectiveness of counsel claim.

In the light of this disposition, Mejia's motion to this Court for transcripts is DENIED as premature.

Mejia also seeks appointed counsel to represent him on appeal. Because of our disposition of the appeal, this motion is DENIED.

LEAVE TO APPEAL IFP GRANTED.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.

ALL OTHER MOTIONS DENIED.