IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20906
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAUL A. AVENDANO,

Defendant-Appellant.

- - - - - - - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR H 93-39-1
- - - - - - - - - -
(October 19, 1995)

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

PER CURIAM:*

Raul A. Avendano challenges the district court's denial of collateral relief based on his argument that the sentencing court misapplied the Sentencing Guidelines.

A defendant who has been convicted and has exhausted his right to appeal is presumed to have been "`fairly and finally convicted.'" United States v. Shaid, 937 F.2d 228, 231-32 (5th Cir. 1991) (en banc) (citation omitted), cert. denied, 502 U.S.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

1076 (1992). "[A] `collateral challenge may not do service for an appeal.'" Id. at 231 (quoting United States v. Frady, 456 U.S. 152, 165 (1982)). In reviewing the denial of a § 2255 motion, this court reviews the district court's factual findings for clear error, and questions of law are reviewed de novo. United States v. Gipson, 985 F.2d 212, 214 (5th Cir. 1993).

"Relief under . . . § 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." United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). "A district court's technical application of the Guidelines does not give rise to a constitutional issue." Id. Thus, Avendano is not entitled to the relief that he seeks.

AFFIRMED.