

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40785
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRES MARRERO GONZALES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:93-CR-217
- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

In his direct criminal appeal, Andres Marrero Gonzales contends solely that application of *Custis v. United States*, ___ U.S. ___, 114 S. Ct. 1732 (1994), to defendants represented by federal public defenders violates the Equal Protection Clause because federal public defenders may not assist defendants to overturn state convictions in state-court proceedings. Gonzales's contention is frivolous.

In *Custis*, the Supreme Court held that defendants may not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

challenge the validity of their state sentences in federal sentencing proceedings, unless they contend that they were unrepresented by counsel during their state proceedings. *Custis*, 114 S. Ct. at 1739. The Court noted, however, that a defendant who has invalidated his convictions through state proceedings or federal habeas proceedings may return and "apply for reopening of any federal sentence enhanced by the state sentences." *Id.*

A petitioner has no constitutional right to assistance of counsel on a collateral challenge to his conviction. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Additionally, a Texas habeas applicant may proceed *pro se* before Texas state courts. *See, e.g., Ex parte McLain*, 869 S.W.2d 349, 350 (Tex. Crim. App. 1994)(en banc). Gonzales cannot show that he is disadvantaged because the federal public defender cannot represent him to challenge his state-court convictions in state court. He has shown no equal protection violation.

Gonzales's appeal is frivolous.

APPEAL DISMISSED.