

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-50069
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RAUL DIAZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(SA-91-CR-364)

(August 10, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Raul Diaz appeals from the district court's denial of his "sworn motion to reduce terms of sentence," which the district court interpreted as a § 2255 petition.

Diaz's three main arguments seem to be 1) that the Fifth Circuit is not a constitutional court, but a legislative court; 2) that federal criminal jurisdiction is limited to admiralty/maritime jurisdiction and federal common law; and 3) that the United States

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

is a sovereign and therefore cannot be a party plaintiff in a constitutional court.

The cases cited by Diaz for the constitutional/legislative court distinction do not concern the federal district or appeals courts; they deal with territorial courts, the Court of Claims, and the District of Columbia courts. Diaz cites no authority for the proposition that either this court or the district court for the Western District of Texas is not an Article III constitutional court. Under Article III, § 1 of the constitution, "[t]he Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." The current codification of this court's authority is 28 U.S.C. § 41; Texas district courts fall under 28 U.S.C. § 124.

Article III, § 2 provides that the "judicial Power shall extend to all cases, in Law and Equity, arising under . . . the Laws of the United States" and "to Controversies to which the United States shall be a Party." Under 18 U.S.C. § 3231, federal district courts "shall have original jurisdiction, exclusive of the court of the States, of all offenses against the laws of the United States." This court has recognized the district courts' criminal jurisdiction in **United States v. Drobny**, 955 F.2d 990, 997 (5th Cir. 1992).

Diaz's second argument is also flawed. The cases cited for the proposition that federal criminal jurisdiction is limited to admiralty/maritime jurisdiction and federal common law do not

purport to restrict the federal courts from exercising jurisdiction over criminal conduct. Diaz cites to cases defining "territorial jurisdiction" for purposes of 18 U.S.C. § 113 (assault on a government reservation) and also to a case distinguishing a court's admiralty jurisdiction from Congress' authority to make laws concerning piracy. Diaz also points out that the jurisdiction of constitutional courts is limited to "cases or controversies" as defined by the constitution. Diaz contends that this jurisdiction cannot be expanded by statute, and therefore any statute conferring criminal jurisdiction is invalid. Diaz interprets "Laws of the United States" to mean only common law and admiralty/maritime law, but Diaz cites no authority to support this proposition.

Diaz's third argument--that the United States cannot be a party plaintiff because it is entitled to sovereign immunity and anyone it attempts to sue is also immune--is also preposterous and wholly unsupported.

Finally, in his form pleading, Diaz asserts from time to time that all allegations must be accepted as true because they have not been controverted by the government; it also contains "affidavits" making legal conclusions supporting many of the above arguments which he asserts must be accepted as true. As authority, Diaz cites **Howard v. King**, 707 F.2d 215 (5th Cir. 1983), which applies such a requirement to district courts in ruling on Fed. R. Civ. P. 12(b)(6) motions and dismissals under 28 U.S.C. §1915(d). **Howard** has no application to a postconviction motion in a criminal proceeding.

In sum, Diaz's motion filed in the district court and his appeal from the district court's order are nonsensical. The appeal is frivolous and is dismissed. Diaz has a number of pending motions,² all of which are meritless. All motions are denied.

APPEAL DISMISSED.

MOTIONS DENIED.

² The motions pending include: a motion for rehearing of the April 4 orders; a motion to require the district court to provide findings of fact and conclusion of law under Fed. R. Civ. P. 52 or Fed. R. Crim. P. 23; "bills of information" numbers 1 and 2, which challenge the two orders entered April 4 because they were unopposed, because the court gave no supporting findings, and because the clerk did not sign and seal them; and a motion for bond pending appeal.