

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50466
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JULIAN ALBERTO MONTOYA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-94-CA-017(W-87-CR-67(1))
- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Julian Alberto Montoya appeals the denial of his motion for relief pursuant to 28 U.S.C. § 2255.

To the extent that we construe Montoya's contention on appeal that counsel was ineffective because he did not file a suppression motion as repeating the suppression contention in his district court motion, which did not assert counsel's ineffectiveness on that basis, he waived any such contention by pleading guilty. A valid guilty plea waives all

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

nonjurisdictional defects, unless those defects relate to the voluntariness of the defendant's plea. *Smith v. Estelle*, 711 F.2d 677, 682 (5th Cir. 1983), *cert. denied*, 466 U.S. 906 (1984).

Regarding all Montoya's other contentions, 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) (citation omitted).

Assuming that errors by Montoya's translator in some way could have influenced Montoya's guilty plea, Montoya's contentions regarding his translator would require this court to make factual determinations about mistakes or deliberate mistranslations. We need not consider those contentions.

No manifest injustice will result from our decision not to consider Montoya's other contentions. Consideration of those contentions would amount to allowing Montoya an out-of-time appeal of earlier denials of motions pursuant to § 2255 and former FED. R. CIV. P. 35.

Because Montoya's appeal is frivolous, it is hereby DISMISSED. Additionally, the Government's motion to strike those portions of Montoya's brief that refer to material outside of the record is hereby GRANTED.