

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60025
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ANDRES GARZA-TIJERINA,

Defendant-Appellant.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA M-93-021(CR M92-011-08)

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(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

On direct criminal appeal in 1993, we affirmed Jose Andres Garza-Tijerina's conviction and sentence for possession with intent to distribute heroin. We held that the evidence was sufficient and that an upward departure was proper. United States v. Garza-Tijerina, No. 92-7627, slip op. at 1-9 (5th Cir. June 3, 1993) (unpublished).

In the instant appeal of the district court's denial of Garza's consolidated motions to vacate, set aside, or correct sentence filed pursuant to 28 U.S.C. § 2255, Garza argues that

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the evidence was insufficient and that the upward departure was improper. We will not consider on appeal of the denial of a § 2255 motion the same issues that were decided on direct criminal appeal. United States v. Santiago, 993 F.2d 504, 506 & n.4 (5th Cir. 1993).

Garza raised other issues in the district court. Because he does not argue those issues on appeal, they are abandoned. See Hobbs v. Blackburn, 752 F.2d 1079, 1083 (5th Cir.), cert. denied, 474 U.S. 838 (1985). Garza's motion to file an out-of-time reply brief is GRANTED, and we have considered his reply brief.

AFFIRMED.