

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60093
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH HOBRECHT GARZA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 93-CV-188 (CR-L-88-231)

(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that Joseph Hobrecht Garza's motion for leave to appeal in forma pauperis (IFP) is DENIED. The appeal lacks arguable merit and is, therefore, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

Garza's argument that the district court improperly sentenced him to a term of supervised release lacks arguable merit. In dismissing Garza's appeal following his first 28

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

U.S.C. § 2255 motion as frivolous, this Court stated that "the [district] court correctly noted that a supervised release term was authorized by 18 U.S.C. § 3583(b), which was in effect during the period that the conspiracy occurred (on or about May 17, 1988)." Thus, this Court has squarely rejected the argument raised by Garza, and it lacks merit. See United States v. Badger, 925 F.2d 101, 105 (5th Cir. 1991). Moreover, this issue may not be cognizable in a § 2255 motion. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

IT IS FURTHER ORDERED that Garza's application for appointment of counsel is DENIED.

APPEAL DISMISSED.