

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60474
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUSTO E. ROQUE, JR. aka
Justo E. Roque-Romero,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:94cv63PR/1:94cv123PR(1:94cr67PR)

- - - - -
(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

On appeal from the district court's denial of his motion to vacate, set aside, or correct a sentence brought under 28 U.S.C. § 2255, Justo Enrique Roque-Romero (Romero) neither addresses nor briefs his ineffective-assistance-of-counsel claims raised in the district court. Thus, those claims are deemed abandoned. See Hobbs v. Blackburn, 752 F.2d 1079, 1083 (5th Cir.), cert. denied, 474 U.S. 838 (1985).

Romero presents the following claims in his appellate brief:

1) insufficiency of the evidence; 2) erroneous admission of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

evidence of acts occurring prior to the dates of the conspiracy alleged in the indictment; 3) erroneous admission of photographs of cocaine; 4) erroneous admission of testimony that Gladis Roque kept a hand-gun in her purse at Romero's behest; and 5) improper limiting of cross-examination of Gladis Roque regarding unrecorded statements.

They are, with the exception of the "handgun-in-the-purse" claim, identical to those issues raised and disposed of on direct appeal. See United States v. Roque-Romero, No. 92-7657 (5th Cir. Aug. 5, 1993) (unpublished; copy attached). Issues raised and disposed of in previous appeals from an original judgment of conviction cannot be considered in § 2255 motions. United States v. Kalish, 780 F.2d 506, 508 (5th Cir.), cert. denied, 476 U.S. 118 (1986).

The "handgun-in-the-purse" claim was listed as error on direct appeal but, because Roque offered no argument, we did not address it. Even if this issue is not thus barred under Kalish, it is a non-constitutional issue that could have been raised on direct appeal. Therefore, it is not cognizable in a § 2255 proceeding. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992).

Romero's appeal presents no issue of arguable merit and is thus frivolous. See 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.

APPEAL DISMISSED.