

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-40127  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS GUADALUPE MOLINA, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(L-CA-94-14)

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February 8, 1996  
Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Jesus Guadalupe Molina, Jr., who appeals *pro se* the denial of his § 2255 motion, is before our court for the second time on this matter. See *United States v. Molina*, No. 94-60182 (5th Cir. 1994) (remanding for factual determination whether Molina requested his counsel file notice of appeal). Molina contends that he was denied effective assistance of counsel when his attorney failed to file a timely notice of appeal, even though Molina had requested that an appeal of his sentence be filed. (Molina's conviction is pursuant to a plea of guilty.) On remand, the district court held

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

an evidentiary hearing to determine whether Molina had, in fact, made such a request.

In reviewing the denial of a § 2255 motion, we review findings of fact only for clear error. *E.g.*, ***United States v. Gipson***, 985 F.2d 212, 214 (5th Cir. 1993). Based on our review of the record, we conclude that the district court's determination that Molina never requested that his attorney appeal his sentence is supported by both the testimony of Molina's attorney and by the inconsistency of Molina's contentions. Moreover, we will not disturb the district court's finding that the testimony of Molina's counsel was more credible than Molina's. ***United States v. Bass***, 10 F.3d 256, 258 (5th Cir. 1993) (court gives credence to credibility determinations unless clearly erroneous).

The district court's finding of fact that Molina never requested that his lawyer appeal his sentence is not clearly erroneous. Accordingly, the denial of the § 2255 motion is

**AFFIRMED.**