

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20451
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GODFREY OKE OBIOZOR, a/k/a
Godfrey Oke Obizar,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Texas
USDC No. H-95-CV-5670

December 11, 1996
Before GARWOOD, JOLLY, and DENNIS, Circuit Judges.

PER CURIAM:*

Godfrey Oke Obiozor appeals the district court's denial of his motion pursuant to 28 U.S.C. § 2255. Obiozor argues that the government breached the plea agreement; that counsel was ineffective for failing to object to the PSR, failing to move to withdraw Obiozor's plea on the basis of the alleged breach of the

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

agreement and failing to appeal the issues of the breached plea agreement, the denial of acceptance of responsibility, and Obiozor's sentence as a supervisor or manager; and that his sentence is erroneous under the Sentencing Guidelines. He also argues that the district court erred by dismissing his petition without an evidentiary hearing. We have reviewed the record and find no reversible error. An evidentiary hearing was not necessary to resolve Obiozor's claims. United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992). Accordingly, we AFFIRM for the reasons stated by the district court. See United States v. Obiozor, No. CR-H-91-193 (S.D. Tex. Apr. 5, 1996).

This court has not yet determined whether a certificate of appealability ("COA") is required under the circumstances of this appeal. See 28 U.S.C. § 2253. To the extent that a COA is required, we construe Obiozor's notice of appeal as an application for a COA and DENY the motion.

A F F I R M E D.