

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20702
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ORLANDO JORGE ESPINOZA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-93-CR-312-1
- - - - -

April 15, 1997

Before REAVLEY, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Orlando Jorge Espinoza appeals the denial of his motion to correct judgment pursuant to 18 U.S.C. § 3582(c)(2), in which he requested that the judgment against him be corrected to reflect the guideline amendment which changed his base offense level from 40 to 38, and his total offense level from 45 to 43. The district court determined that Espinoza's sentence would not have been lower if the amendment to the guidelines had been in effect

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

at the time Espinoza was sentenced and denied the motion as futile. The district court did not abuse its discretion in refusing relief that would have no effect. See United States v. Shaw, 30 F.3d 26, 28-29 (5th Cir. 1994).

Espinoza argues he was entitled to a hearing on his motion. Absent a factual dispute, the district court did not abuse its discretion in ruling on the motion without first conducting a hearing. See United States v. Townsend, 55 F.3d 168, 171-72 (5th Cir. 1995).

AFFIRMED.