

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20891
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JACK NOVOSELSKY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-96-1916 (CR-H-91-59-25)

- - - - -
January 30, 1997

Before GARWOOD, JOLLY, and DENNIS, Circuit Judges.

PER CURIAM:*

We construe the notice of appeal filed by Jack Novoselsky, federal inmate #42181-019, as a request for the issuance of a certificate of appealability (COA). See Fed. R. App. P. 22(b); United States v. Orozco, ___ F.3d ___ (5th Cir. Dec. 31, 1996, No. 96-50402), 1996 WL 742530 at *4. IT IS ORDERED that COA is GRANTED on Novoselsky's claim that counsel rendered ineffective assistance by misinforming Novoselsky of the plea agreement terms

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

and their effect. See 28 U.S.C. § 2253(c)(2). IT IS ALSO ORDERED that COA is DENIED on the remaining issues. See id.

The district court's summary denial of the 28 U.S.C. § 2255 motion fails to provide findings of fact and conclusions of law on this ineffective-assistance claim, a claim for which the defendant may be entitled to relief in light of the record containing the affidavit of trial counsel. See Gray v. Lucas, 677 F.2d 1086, 1102 (5th Cir. 1982), cert. denied, 461 U.S. 910 (1983). Briefing by the Government is not necessary at this time. See Dickinson v. Wainwright, 626 F.2d 1184, 1186 (5th Cir. Unit B 1980).

Therefore, we vacate the district court's order regarding this one claim and remand for further proceedings.

COA GRANTED ON ONE CLAIM. VACATED AND REMANDED.