

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20958
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PETER EZEKEKE, also known as Peter O. Ezekeke,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-95-CV-5693
- - - - -

February 11, 1998

Before SMITH, EMILIO M. GARZA, and DeMOSS, Circuit Judges.

PER CURIAM:*

Peter Ezekeke appeals the magistrate judge's denial of his motion pursuant to 28 U.S.C. § 2255 wherein he challenged his conviction for collecting credit extensions by extortionate means. He argues that the magistrate judge erred by denying without a hearing his claims that Government knowingly used perjured testimony to secure his conviction and that his appellate counsel was ineffective for failing to appeal the district court's imposition of a \$10,000 fine.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

As noted by the magistrate judge, Ezekeke's assertions of inconsistent testimony are insufficient to establish the knowing use of perjurious testimony. See Koch v. Puckett, 907 F.2d 524, 531 (5th Cir. 1990). We do not reach the merit's of Ezekeke's challenge to his counsel's failure to appeal the imposition of the \$10,000 fine, as it lies outside the scope of § 2255. See United States v. Gaudet, 81 F.3d 585, 592 (5th Cir. 1996). Because the record is sufficient to show conclusively that Ezekeke is entitled to no relief, an evidentiary hearing was unnecessary. See United States v. Bartholomew, 974 F.2d 39, 41 (5th Cir. 1992).

AFFIRMED.