

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40186
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WESLEY WILLIAM WALTER,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4::95-CV-282

June 27, 1996

Before HIGGINBOTHAM, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that Wesley William Walter's motion to proceed in forma pauperis on appeal is DENIED. Walter has not demonstrated cause and prejudice for failing to raise new arguments in his prior motion under 28 U.S.C. § 2255. See McCleskey v. Zant, 499 U.S. 467, 494 (1991). Nor has he shown that a fundamental miscarriage of justice would result if the new claims or

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

previously raised claims are not heard. Id. at 495; United States v. Flores, 981 F.2d 231, 236 (5th Cir.

1993). Thus, the district court did not abuse its discretion in dismissing this § 2255 motion as an abuse of the procedure.

Walter can present no legal points arguable on their merits, and his appeal is frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2. We caution Walter that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Walter is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous because they have been previously decided by this court.

APPEAL DISMISSED. SANCTIONS WARNING ISSUED