

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50266
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL ESPARZA, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-95-CV-358
- - - - -

December 3, 1996

Before DAVIS, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:*

Manuel Esparza, Jr., has filed a motion to appeal in forma pauperis (IFP) the district court's denial of his motion pursuant to 28 U.S.C. § 2255. Having reviewed Esparza's motion, appellate brief and the record, we find that Esparza knowingly and voluntarily waived his right to seek relief under § 2255. See United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994).

The court has not yet decided whether a certificate of

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

appealability ("COA") is required under the circumstances of this appeal or whether the Prison Litigation Reform Act of 1995 (PLRA) applies to appeals from the denial of federal habeas relief. See 28 U.S.C. § 2253; see also Pub. L. No. 104-134, 110 Stat. 1321 (PLRA). We need not resolve those issues here because we conclude that the appeal does not involve a nonfrivolous appellate issue. Accordingly, we DENY the motion for IFP and DISMISS the appeal as frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. Esparza's motion for appointment of counsel is DENIED also.

IFP DENIED; APPOINTMENT OF COUNSEL DENIED; APPEAL DISMISSED.