

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50286
No. 96-50287
No. 96-50568
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RENE GARZA BOTELLO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-92-CR-207
- - - - -

October 29, 1996

Before GARWOOD, JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Rene Garza Botello, federal prisoner # 34404-080, appeals the district court's denial of his motion for reconsideration of the denial of his motion for a new trial, his motion requesting the district court to take judicial notice, and his motion for subpoena duces tecum. Botello has filed motions for leave to proceed in forma pauperis (IFP) on appeal in each of his three

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

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appeals. We liberally construe Botello's district court motions as one motion for a new trial. See, e.g., United States v. Lopez, 842 F.2d 755, 757 (5th Cir. 1988). Because the district court granted Botello's IFP motion in No. 96-50287 and because his motions are liberally construed as one motion for new trial, Botello's IFP motions are DENIED as unnecessary.

Botello's motions to consolidate his appeals are GRANTED. His request for a stay is DENIED as unnecessary.

Botello argues that the district court abused its discretion in denying his motion for a new trial based on newly discovered evidence. We have reviewed the record and the district court's opinion and find no reversible error. United States v. Botello, No. SA-92-CR-207 (W.D. Tex. October 30, 1995, March 29, 1996, April 3, 1996, April 17, 1996).

Botello's appeals are without arguable merit and are thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because Botello's appeals are frivolous, they are DISMISSED. See 5th Cir. R. 42.2.

MOTION TO CONSOLIDATE APPEALS GRANTED; IFP MOTIONS DENIED AS UNNECESSARY; STAY DENIED AS UNNECESSARY; APPEALS DISMISSED AS FRIVOLOUS.