

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50586  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

ROBERT MARTINEZ-GILL,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No.SA-96-CA-266  
- - - - -

December 4, 1997

Before KING, JOLLY and DENNIS, Circuit Judges.

PER CURIAM:\*

The motion by Robert Martinez-Gill (Gill), federal inmate #24434-149, is construed as a request for panel reconsideration of our prior review of the single-judge order denying a certificate of appealability (COA). IT IS ORDERED that the motion is GRANTED. In light of Lindh v. Murphy, 117 S. Ct. 2059, 2068 (1997), Gill was not required to obtain a COA to bring his appeal from the denial of the 28 U.S.C. § 2255 motion, which was filed in March 1996.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Further briefing is unnecessary. See Fed. R. App. P. 28. For essentially the same reasons as explained by the district court in its order of dismissal, see Gill v. United States, No. SA-96-CA-266 (W.D. Tex. May 29, 1996), we conclude that the district court did not abuse its discretion in dismissing the § 2255 motion as an abuse of the § 2255 procedure. To the extent that Gill argues that the Government suborned perjury and coerced the making of the recanting affidavit, the claims raised in Gill's Fed. R. Civ. P. 60(b) motion, this argument is not properly before the court. Gill failed to amend his notice of appeal to include the denial of the Rule 60(b) motion. See Fed. R. App. P. 3(c) & 4(a).

MOTION GRANTED. ORDER DENYING COA RESCINDED. AFFIRMED.