

**UNITED STATES COURT OF APPEALS
For the Fifth Circuit**

No. 97-40283
Summary Calendar

SANTIAGO ARGUIJO,

Petitioner-Appellant,

VERSUS

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
For the Southern District of Texas

(C-96-CA-190)

January 15, 1998

Before WISDOM, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURAM: *

Santiago Arguijo appeals from the denial of his petition for *habeas corpus* relief under 28 U.S.C. § 2254. A jury convicted Arguijo of delivery of less than 28 grams of cocaine. Arguijo was sentenced to 55 years of imprisonment. Two months later, Arguijo pleaded guilty to six additional counts of delivery of less than 28 grams of cocaine and attempted possession of cocaine. His sentences for these additional counts range between 20 and 80 years, to run concurrent with his previous sentence. Now, Arguijo complains that his guilty plea was not voluntarily because of his

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

counsel's erroneous advice that the prosecution would seek to "stack" his sentences if he did not plead guilty.

We have reviewed Arguijo's arguments and the record. We find that the district court's factual findings are adequately supported by the record. Tex. Penal Code § 3.03 does not give Arguijo a mandatory right to join or consolidate the charges against him.² And, Tex. Penal Code § 3.02, which limits the court's authority to impose consecutive sentences, applies only to offenses prosecuted in a single criminal action.³ Finally, U.S.S.G. § 3D1.2 has no bearing on this case because it was a state prosecution. Arguijo's counsel did not give erroneous advice.

The judgment is AFFIRMED.

² See *Grice v. State*, 635 S.W.2d 890, 892 (Tex. App. 1982).

³ See *LaPorte v. State*, 840 S.W.2d 412, 414 (Tex. Crim. App. 1992).