

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50578
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERTO PINEDA-ORTUNO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P96-CA-016
- - - - -

December 10, 1997

Before BARKSDALE, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Gilberto Pineda-Ortuno, federal prisoner no. 53721-080, appeals the district court's dismissal of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Pineda-Ortuno argues that the district court erroneously instructed the jury regarding the elements of the firearm charges in his case and that there was insufficient evidence to support the firearm charges. These issues were decided against him in his direct appeal and cannot be raised again by § 2255 motion. United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Pineda-Ortuno, 952 F.2d 98, 103-04 (5th Cir. 1992); See
United States v. Kalish, 780 F.2d 506, 508 (5th Cir. 1986).

His motion for appointment of counsel is DENIED.

AFFIRMED; MOTION DENIED.