

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50706
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS BARRERA HERNANDEZ, a/k/a Cale,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-91-CR-318-2
- - - - -

April 10, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Carlos Barrera Hernandez, federal inmate #43802-080, moves for the appointment of counsel.

We must examine sua sponte the basis for subject-matter jurisdiction. Giannakos v. M/V BRAVO TRADER, 762 F.2d 1295, 1297 (5th Cir. 1985). Hernandez had not begun, nor has he begun, any postconviction proceeding in the district court when he asked for the appointment of counsel. After criminal proceedings are completed, a noncapital defendant does not have a right to the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appointment of counsel without first filing a 28 U.S.C. § 2255 motion and then only if justice so requires. See McFarland v. Scott, 512 U.S. 849, 857 n.3 (1994); 18 U.S.C. § 3006A(a)(2)(B). The district court lacked jurisdiction to consider Hernandez's motion.

The appeal is DISMISSED. Hernandez's motion is DENIED as moot.