

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-30277  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALVARO GERMAN SALGADO CABALLERO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 89-CR-452-5-A  
- - - - -

June 17, 1999

Before EMILIO M. GARZA, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:\*

Alvara German Salgado Caballero, federal inmate # 21378-034, appeals from the district court's denial of his motion purportedly filed pursuant to 18 U.S.C. § 3742(a)(2). Caballero argues that his sentence was improperly enhanced because the Government did not comply with 21 U.S.C. § 851(a)(1). Caballero argues for the first time that the district court should have reduced his offense level for being a minor participant.

As the district court noted, § 3742(a)(2) does not authorize

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the relief that Caballero seeks. 18 U.S.C. § 3742; see *United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994) (the "provisions for modification of a sentence under § 3742 are available to a defendant only upon direct appeal of a sentence or conviction"). Caballero's arguments sound under 28 U.S.C. § 2255; however, as Caballero has filed at least one prior motion for § 2255 relief and has not obtained this court's authorization to file a second or successive § 2255 motion, the district court did not err by failing to construe his claims under § 2255. The district court properly dismissed Caballero's motion for lack of jurisdiction. The district court's denial of the motion is AFFIRMED.