

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40437
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HILARIO GARZA, III, also known as Lalo,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:95-CR-107-1
USDC No. 2:97-CV-532

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Hilario Garza, III, federal prisoner # 62236-079, seeks a certificate of appealability (COA) from the denial of his petition for a writ of audita querela, in which he challenged his conviction for conspiracy to possess with intent to distribute marijuana. A COA is not required for Garza to appeal. See 28 U.S.C. § 2253(c). The district court correctly denied Garza's petition for a writ of audita querela because redress was available to Garza under 28 U.S.C. § 2255. See Tolliver v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Dobre, 211 F.3d 876, 878 (5th Cir. 2000); United States v. Banda,
1 F.3d 354, 356 (5th Cir. 1993).

Accordingly, Garza's motion to proceed in forma pauperis is
DENIED, and the appeal is DISMISSED AS FRIVOLOUS. See 5TH CIR.
R. 42.2. COA is DENIED as unnecessary.