

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40410
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HENRY DE JESUS POSADA-MUNOZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-95-CV-173
- - - - -

March 20, 1997

Before GARWOOD, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

Henry de Jesus Posada-Munoz, #64583-079, appeals from the district court's order dismissing his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. He argues that the district court erred in calculating the quantity of heroin used to determine his base offense level and that the calculation of his sentence using the 1993 Sentencing Guidelines constituted an ex post facto violation.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Posada's challenge to the district court's application of the guidelines is not cognizable in a § 2255 motion because a district court's technical application of the Guidelines does not give rise to a constitutional issue. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992). Posada's assertion that the application of the 1993 version of the Guidelines constitutes an ex post facto violation lacks a factual basis since Posada's sentence was calculated using the 1992 version of the Guidelines.

For the first time on appeal, Posada asserts that the indictment was fundamentally defective because the language of the indictment failed to precisely track the language of the statute. Posada's assertion was not adequately briefed and is thus deemed abandoned. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

AFFIRMED.