

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 11, 2021

Lyle W. Cayce
Clerk

No. 20-10258
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE INEZ ZAPATA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CR-285-9

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Jose Inez Zapata, federal prisoner # 24881-077, seeks to proceed in forma pauperis (IFP) on appeal from the denial of his motion for a sentence reduction pursuant to Section 404 of the First Step Act of 2018 based on his ineligibility for such relief. Zapata contends that he was convicted of an offense involving cocaine base in light of the Supreme Court's decision in *DePierre v. United States*, 564 U.S. 70 (2011).

We construe Zapata's IFP motion as a challenge to the district court's certification that his appeal was not taken in good faith. *See* 28 U.S.C.

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§ 1915(a)(3); *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into the good faith of the appeal “is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous).” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted).

The record and Zapata’s motion reflect that he was not convicted of an offense that was the “violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010.” First Step Act of 2018, Pub. L. No.115-391, § 404(a), 132 Stat. 5194, 5222 (2018); *see also United States v. Jackson*, 945 F.3d 315, 319-20 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 2699 (2020); *Dorsey v. United States*, 567 U.S. 260, 269 (2012). His argument to the contrary is based on a misreading of *DePierre*, 564 U.S. at 80. Thus, Zapata fails to demonstrate that his appeal involves any nonfrivolous issues. *See Howard*, 707 F.2d at 220. We DENY his motion to proceed IFP and DISMISS the appeal as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; *Howard*, 707 F.2d at 220; 5TH CIR. R. 42.2. His motion for the appointment of counsel is also DENIED.