

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10084
Conference Calendar

SALVADOR MIRANDA OTERO,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:99-CV-2611-D

August 23, 2000

Before KING, Chief Judge, and POLITZ and WIENER, Circuit Judges.

PER CURIAM:*

Salvador Miranda Otero, Texas state prisoner #439147, requests a certificate of appealability (COA) to appeal from the district court's denial of his petition for writ of coram nobis pursuant to 28 U.S.C. § 1651. Otero's request for a COA is DENIED AS UNNECESSARY. His motion for the appointment of appellate counsel is also DENIED.

The writ of coram nobis is an extraordinary remedy available to a petitioner no longer in custody who seeks to vacate his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

criminal conviction in circumstances where he can demonstrate that he is suffering civil disabilities as a consequence of the conviction and that the challenged error is of sufficient magnitude to justify extraordinary relief. Jimenez v. Trominski, 91 F.3d 767, 768 (5th Cir. 1996). Because Otero is still in custody, he is not entitled to coram nobis relief. His appeal is therefore DISMISSED AS FRIVOLOUS. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

COA DENIED AS UNNECESSARY; MOTION FOR THE APPOINTMENT OF APPELLATE COUNSEL DENIED; APPEAL DISMISSED.