

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7775  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS GARCIA, JR.

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CR B-93-099-03

- - - - -  
February 29, 1996

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Appellant argues that the district court's one-year delay in ruling on his motion to proceed in forma pauperis on appeal constitutes an additional punishment imposed because he exercised his right to appeal. Appellant cannot raise a vindictiveness claim because there was no resentencing. See United States v. Vontsteen, 950 F.2d 1086, 1092 (5th Cir.)(en banc), cert. denied, 505 U.S. 1223 (1992).

This appeal is frivolous. The issue raised is without arguable merit and thus frivolous. Counsel is admonished that all counsel are subject to sanctions. Counsel has no duty to

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

bring a frivolous appeal. The opposite is true. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir.), cert. denied, 115 S. Ct. 283 (1995). Counsel is also admonished that the brief filed on behalf of Garcia is not in compliance with 5th Cir. Rule 32.1 relative to type size and lines per page.

Because the appeal presents no issue of arguable merit, it is DISMISSED as frivolous. See 5th Cir. R. 42.2.

DISMISSED.