

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50609
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO JAVIER HERNANDEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-95-CV-14
- - - - -

September 25, 1996

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Francisco Javier Hernandez, federal prisoner # 53458-079, argues that the district court erred in dismissing his 28 U.S.C. § 2255 motion for abuse of procedure. Hernandez argues that his first motion was not dismissed on the merits and, thus, he was entitled to file a second § 2255 motion. Hernandez contends that he did not deliberately fail to raise in his prior motion the new

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

issues raised in his second motion. He contends that he failed to raise the claims because of his legal ignorance.

Hernandez's prior motion was dismissed on the merits because the district court determined that it did not raise a cognizable § 2255 claim and did not dismiss the motion for lack of jurisdiction.

Hernandez's legal ignorance of his claims does not establish "cause" because he was aware of the facts underlying his claim at the time that he filed his first motion. See United States v. Flores, 981 F.2d 231, 235-36 (5th Cir. 1993). Nor has Hernandez demonstrated that the failure to review his claims that he was improperly sentenced will result in a fundamental miscarriage of justice. Id. at 236.

AFFIRMED.