

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-50894  
USDC No. EP-95-CV-355

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GABRIEL ERNESTO GARCES

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
- - - - -

March 24, 1997

Before KING, JOLLY, and DENNIS, Circuit Judges.

PER CURIAM:\*

Gabriel Garces (# 63220-080) has applied to this court for leave to appeal in forma pauperis (IFP) from the district court's denial of his 28 U.S.C. § 2255 motion to vacate. Garces contends that for several reasons, he should not have received a ten-year mandatory minimum sentence pursuant to 21 U.S.C. §§ 952(a) and 960.

IT IS ORDERED that leave to appeal IFP is DENIED, because Garces' appeal lacks arguable merit and is therefore frivolous.

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Because the appeal is frivolous, IT IS FURTHER ORDERED that the appeal is DISMISSED. See 5th Cir. R. 42.2.

If this court were to hold that a certificate of appealability (COA) is required in a case such as this, COA would be denied. See 28 U.S.C. § 2253(c).

IFP DENIED; APPEAL DISMISSED.