

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60610
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLEY LEE MARTIN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:94CV749WS
- - - - -

June 18, 1996

Before DAVIS, BARKSDALE and DeMOSS, Circuit Judges.

PER CURIAM:*

Charley Lee Martin has applied for leave to appeal in forma pauperis (IFP) from the denial of his post-conviction motion under 28 U.S.C. § 2255. Martin contends that his attorney rendered ineffective assistance in failing to appeal, or in advising him to waive his right to appeal, certain sentencing issues, including the questions whether Martin's prior convictions were related for purposes of determining Martin's

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

criminal-history category and the applicability of the career-offender provisions of the Sentencing Guidelines. Martin has not shown that his attorney was professionally unreasonable in failing to raise these issues or that the issues would have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); see also United States v. Metcalf, 898 F.2d 43, 44-46 (5th Cir. 1990).

Accordingly, Martin has not shown that there is a nonfrivolous issue for appeal and the application for leave to proceed IFP is DENIED. See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

IFP DENIED; APPEAL DISMISSED.