

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-50242
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL ANTHONY JOHNSON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-95-CA-270
- - - - -
February 21, 1997

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Michael Johnson appeals the district court's denial of his motion pursuant to 28 U.S.C. § 2255 wherein he argued, inter alia, that the district court misapplied the career-offender provisions of the Sentencing Guidelines and that his counsel was ineffective for failing to argue such at sentencing.

The two prior convictions which designated Johnson as a career offender were separated by an intervening arrest. Thus, the convictions could not have been considered related under any set of factual criteria set forth by Johnson. See U.S.S.G.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

§ 4A1.2(a)(2), comment. (n.3); United States v. Fitzhugh, 984 F.2d 143, 146-47 n.15 (5th Cir.), cert. denied, 510 U.S. 895 (1993). Trial counsel was not deficient for failing to make an argument that would have been legally meritless. Smith v. Puckett, 907 F.2d 581, 585 n.6 (5th Cir. 1990), cert. denied, 498 U.S. 1033 (1991). The district court's judgment is AFFIRMED. To the extent that a certificate of appealability (COA) may be required, it is DENIED.