

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40594  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE OMAR SALAZAR,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-96-CV-54  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Jorge Omar Salazar appeals from the district court's order denying his petition for a certificate of appealability [COA]. Because he filed the underlying motion for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 prior to April 24, 1996, he did not need a COA, therefore, we construe this as an appeal from the denial of his § 2255 motion. *See United States v. Carter*, 117 F.3d 262, 264 (5th Cir. 1997).

Salazar argues that his conviction under 18 U.S.C. § 924(c)(1) was invalidated by the Supreme Court's decision in

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

*Bailey v. United States*, \_\_ U.S. \_\_, 116 S. Ct. 501, 505 (1995).

We have reviewed the record and the district court's opinion and find no reversible error. Because there is clear evidence on the record that Salazar knowingly carried a weapon in his boot during and in connection to a drug trafficking offense, we find his argument is entirely without merit and thus frivolous. See *United States v. Still*, 102 F.3d 118, 124 (5th Cir. 1996), *cert. denied*, 118 S. Ct. 43 (1997); *United States v. Rivas*, 85 F.3d 193, 195-96 (5th Cir.), *cert. denied*, 117 S. Ct. 593 (1996).

Accordingly, we DISMISS the appeal pursuant to 5th Cir. R. 42.2. DISMISSED.