

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10469

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE DAVALOS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:96-CR-10-2
- - - - -

August 19, 1998

Before DAVIS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Jorge Eduardo Davalos, prisoner # 28251-077, has filed a motion for appointment of counsel to appeal the district court's denial of his motion for new trial and his motion for reconsideration of the order denying his motion for new trial. Davalos has failed to show that the evidence on which he relies for a new trial is "newly discovered" and was unknown to him at the time of trial. See United States v. Jaramillo, 42 F.3d 920, 924 (5th Cir. 1995). Therefore, the district court did not abuse its discretion in denying his motion for new trial or his motion

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

for reconsideration of that denial. See United States v. Time, 21 F.3d 635, 642-43 (5th Cir. 1994).

Davalos cannot make a showing of a nonfrivolous issue for appeal. See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). Accordingly, his appeal is dismissed and his motion for appointment of counsel is denied. See United States v. Boutwell, 896 F.2d 884, 888 (5th Cir. 1990) (one-judge order); 5th Cir. R. 42.2.

MOTION DENIED; APPEAL DISMISSED.