

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50055
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAUL GARDEA-LUNA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. P-98-CR-107-16

October 20, 1999

Before JONES, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

Raul Gardea-Luna appeals from the district court's denial of his "Motion to Enforce Plea Bargain," which was filed shortly after judgment was rendered in the above-styled case. Gardea's motion was "unauthorized" because the relief he sought was not available under any federal rule or statute providing for post-conviction relief. See United States v. Early, 27 F.3d 140, 141-42 (5th Cir. 1994). Relief was not available to Gardea under Fed. R. Crim. P. 33, 35, or 36, or 28 U.S.C. § 2255. See id.; 28

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S.C. § 2255. Although the district court denied Gardea's motion on the merits, it should have denied the motion for lack of jurisdiction. See Early, 27 F.3d at 142. This court may affirm on that alternative ground. See id.

AFFIRMED.