

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 23, 2008

No. 06-41521
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARIO RICARDO CASAREZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:03-CV-22
USDC No. 7:99-CR-547-6

Before DAVIS, GARZA and PRADO, Circuit Judges.

PER CURIAM:*

Mario Ricardo Casarez pleaded guilty to conspiracy to possess with intent to distribute between 100 kilograms and 1000 kilograms of marijuana. Casarez appeals the district court's denial of his 28 U.S.C. § 2255 motion. This court granted Casarez a certificate of appealability on the issue whether he received ineffective assistance of counsel because counsel failed to consult with Casarez after Casarez reasonably demonstrated to counsel an interest in appealing.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Casarez argues that his counsel performed deficiently because Casarez repeatedly asked counsel prior to sentencing about the possibility of appealing the result of his case, counsel objected to the amount of marijuana assessed to Casarez in the presentence report (PSR), counsel indicated at sentencing that the PSR contravened Casarez's plea agreement, Casarez informed counsel immediately following the sentencing hearing that he was dissatisfied with his sentence, and Casarez tried to call counsel multiple times within 10 days after the sentencing hearing.

The district court advised Casarez of his right to appeal and the time in which to file an appeal. Although Casarez was upset about sentencing matters before and after the sentencing hearing, Casarez did not express to counsel any interest in appealing the sentence either when Casarez spoke to counsel after the sentencing hearing or when Casarez called counsel's office. Casarez did not reasonably demonstrate to counsel that he was interested in appealing. See *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000).

AFFIRMED.