

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2010

Lyle W. Cayce
Clerk

No. 10-50153

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DANIEL DOMINGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:99-CR-371-1

Before DENNIS, CLEMENT, and ELROD, Circuit Judges.

PER CURIAM:*

Daniel Dominguez seeks leave to proceed in forma pauperis (IFP) on appeal. To proceed IFP on appeal, Dominguez must show that he is a pauper and that he will raise a nonfrivolous issue on appeal. *See Jackson v. Dallas Police Dep't*, 811 F.2d 260, 261 (5th Cir. 1986).

Dominguez filed in the district court two motions, asserting that he had satisfied his criminal judgment that was entered on November 9, 2000. Dominguez's motions were unauthorized motions which the district court was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

without jurisdiction to entertain. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). The district court could not construe the motions as FED. R. CRIM. P. 35 motions because they were neither made by the Government nor made within seven days of sentencing. *See* FED. R. CRIM P. 35; *Early*, 27 F.3d at 141. The motions were also not authorized under 18 U.S.C. § 3582(c)(2) because they were not based upon an amendment to the Sentencing Guidelines. *See* § 3582(c)(2); *Early*, 27 F.3d at 142. In addition, the district court could not construe the motions under 18 U.S.C. § 3742, as relief thereunder is reserved only for direct appeals. *See* § 3742. Finally, the district court did not have jurisdiction to construe the motions as 28 U.S.C. § 2255 motions because Dominguez had previously filed a § 2255 motion and had not received permission from this court to file a successive § 2255 motion. *See Hooker v. Sivley*, 187 F.3d 680, 681-82 (5th Cir. 1999).

Dominguez's appeal is without arguable merit and is therefore dismissed as frivolous. *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

IFP DENIED; APPEAL DISMISSED.