

United States Court of Appeals

Fifth Circuit

F I L E D

September 27, 2006

Charles R. Fulbruge III
Clerk

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

No. 04-30985
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-
Appellee,

versus

JOSE ESTRADA-AGUIRRE,

Defendant-
Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:03-CV-266-C
USDC No. 3:99-CR-3-C-ALL

Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:*

Jose Estrada-Aguirre moves for a certificate of appealability (COA) to appeal from the denial of his 28 U.S.C. § 2255 motion as time-barred. Estrada-Aguirre challenges his conviction of illegally reentering the United States following a previous deportation.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Estrada-Aguirre also filed a notice of appeal from the district court's denial of relief pursuant to FED. R. CRIM. P. 33. He has not evinced a desire to pursue an appeal of the denial of the Rule 33 denial, despite having been given an opportunity to submit a brief. He has, therefore, waived that appeal. As to the Rule 33 denial, Estrada-Aguirre's appeal is dismissed.

Estrada-Aguirre contends that appellate counsel failed to notify him of this court's judgment on direct appeal, preventing him from knowing that the one-year limitations period for seeking § 2255 relief had begun to run. A COA may be issued only if Estrada-Aguirre has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the district court has denied habeas relief on procedural grounds, the movant must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Estrada-Aguirre has failed to show that jurists of reason would find it debatable whether the district court's procedural ruling was correct. His COA motion therefore is denied.

COA DENIED; APPEAL DISMISSED AS TO DENIAL OF FED. R. CRIM. P. 33 MOTION.