

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 16, 2009

Charles R. Fulbruge III  
Clerk

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No. 08-50926  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE MIGUEL MARTINEZ

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:08-CV-406  
USDC No. 5:06-CR-649-ALL

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Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

Jose Miguel Martinez, federal prisoner # 82797-180, moves in this court for a certificate of appealability (COA) and leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 28 U.S.C. § 2255 motion. In his § 2255 motion, Martinez challenged his guilty plea conviction and sentence for possession with intent to distribute in excess of five kilograms of cocaine.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

After Martinez filed a notice of appeal from the denial of his § 2255 motion, he filed in the district court a motion for appointment of appellate counsel or for review of his case. The district court granted this motion, allowed Martinez to withdraw his guilty plea, and ordered the case be set for trial. The district court was without jurisdiction to grant such relief. *See Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 329 (5th Cir. 2004); *Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 932 (5th Cir. 1976).

We construe the district court's grant of relief as a request for remand and authorization to grant relief. *See Willie v. Continental Oil Co.*, 746 F.2d 1041, 1046 (5th Cir. 1984). The request is GRANTED, and the case is REMANDED to the district court for re-entry of its order granting relief and for further proceedings as are necessary. Martinez's motions for a COA and leave to proceed IFP on appeal are DENIED as unnecessary.