

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

May 5, 2022

Lyle W. Cayce  
Clerk

---

No. 21-50601  
Summary Calendar

---

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

GARRY DAVID GALLARDO,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:06-CR-133-1

---

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Garry David Gallardo, federal prisoner # 41571-080, seeks leave to proceed in forma pauperis (IFP) on appeal from the denial of his 18 U.S.C. § 3582(c)(1)(A) motion for compassionate release, arguing that he is financially eligible and that the district court erred in denying compassionate

---

\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50601

release because his convictions are invalid as the trial court lacked subject matter jurisdiction. Because Gallardo fails to demonstrate a nonfrivolous issue for appeal, the motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2.