

EXHIBITS-LIST

- 1) Fifth Circuit Court of Appeals: Affirmation
- 2) Petition For Rehearing
- 3) Deputy Clerk's Letter Declining Filing of Petition For Rehearing
- 4) 28 U.S.C. 2255: Motion Denied
- 5) Motion To Amend The Record
- 6) Deputy Clerk's Letter Declining Filing of Motion To Amend
- 7) Deputy Clerk's Letter Declining Filing of Documents
- 8) Petition For Post-Conviction Relief
- 9) Counsel's Transmittal of Anders Brief

EXHIBITS-LIST

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Melodie Rupp #09838023
Petitioner Pro-Se

Date: 6-14-20

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 6, 2020

Lyle W. Cayce
Clerk

No. 19-40555
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MELODIO REYES,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:19-CR-423-1

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Melodio Reyes pleaded guilty to transporting an alien within the United States for private financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (a)(1)(A)(v)(II), (a)(1)(B)(i). He was sentenced to 33 months in prison and three years of supervised release. Reyes timely filed a notice of appeal.

On appeal, Reyes asserts that the district court erred when it adopted the calculation of his criminal history score in the Presentence Report (PSR).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Specifically, Reyes argues that a [1991] Texas conviction for burglary of a building and a [2013] Louisiana conviction for battery of a police officer should not have been counted towards his criminal history score.

We review this unpreserved issue for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *see also Davis v. United States*, No. 19-5421, 2020 WL 1325819 (U.S. Mar. 23, 2020). Reyes's PSR, which the district court adopted, provided an adequate evidentiary basis for the existence of Reyes's [1991 Texas conviction] and 2013 Louisiana conviction. *See United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012). Reyes does not present arguments or point to evidence demonstrating that the PSR's information is unreliable or inaccurate. He also has not asserted at any time that he was not in fact convicted in 1991 for burglary or in 2013 for battery. Moreover, at his sentencing hearing, Reyes acknowledged that he reviewed the PSR with his attorney and when asked whether "everything appear[ed] to be correct in the" PSR, he replied, "[y]es." Under these circumstances, Reyes has shown no error, and certainly no clear or obvious error. *See Puckett*, 556 U.S. at 135.

Accordingly, the judgment of the district court is affirmed. Reyes's motion for appointment of new counsel is denied. *See FIFTH CIRCUIT PLAN UNDER THE CRIMINAL JUSTICE ACT*, § 5(B).

AFFIRMED; MOTION TO APPOINT NEW COUNSEL DENIED.

Note: Wrong Prior Convictions

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

David J. Bradley, Clerk

MELODIO REYES

Movant,
VS.

UNITED STATES OF AMERICA

Respondent.

§
§
§ CIVIL ACTION NO. 7:19-CV-00355
§ CRIM ACTION NO. 7:19-CR-00423-1
§
§
§

REPORT AND RECOMMENDATION

Movant Melodio Reyes, a federal prisoner proceeding *pro se*, initiated this action by filing a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.¹ (Civ. Dkt. No. 1). This case was referred to the undersigned magistrate judge for report and recommendation pursuant to 28 U.S.C. § 636(b).

After a careful review of the record and relevant law, the undersigned respectfully recommends that Movant's § 2255 motion (Civ. Dkt. No. 1) be **DENIED** and this civil action be **DISMISSED** without prejudice as premature. Finally, it is recommended that a certificate of appealability be **DENIED** and the case be closed.

I. BACKGROUND

On March 12, 2019, a grand jury in the Southern District of Texas, McAllen Division, returned a three-count indictment charging Movant with: (1) conspiring to transport aliens within the United States; (2) knowingly transporting an alien, Silanderson De Aquino-Bautista, within the United States for the purpose of commercial advantage and private financial gain; (3)

¹ The undersigned notes that Movant refers to his filing as a "Petition for Post-Conviction Relief pursuant to 28 U.S.C. § 2254," citing the appropriate statute for state prisoners. (Civ. Dkt. No. 1 at 1). Because Movant is a federal prisoner, the undersigned construes Movant's filing to be a § 2255 motion. The undersigned finds that a warning pursuant to *Castro v. United States*, 540 U.S. 375 (2003), is not necessary because the undersigned recommends that this action be dismissed without prejudice.

Exhibit 3

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 20, 2020

#09838023
Mr. Melodio Reyes
FCI Beaumont Medium
P.O. Box 26040
Beaumont, TX 77720-6040

No. 19-40555 USA v. Melodio Reyes
USDC No. 7:19-CR-423-1

Dear Mr. Reyes,

We will take no action on your Petition for Rehearing. Only your court appointed attorney can file motions or other documents on your behalf. By copy of this letter to your attorney, I am advising him to review your documents on our docket, for whatever action he deems necessary.

Sincerely,

LYLE W. CAYCE, Clerk

Jann Wynne

By:

Jann M. Wynne, Deputy Clerk
504-310-7688

cc: Mr. Roberto Balli
Ms. Carmen Castillo Mitchell
Mr. John A. Reed

Letter in response submitted 4-22-20

Exhibit #6

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 18, 2019

#09838023
Mr. Melodio Reyes
FCI Beaumont Medium Security
P.O. Box 26040
Beaumont, TX 77720

No. 19-40555 USA v. Melodio Reyes
USDC No. 7:19-CR-423-1

Dear Mr. Reyes,

We will take no action on your motion to amend the record. Only your attorney can file motions or other documents on your behalf. Your attorney is advised to review the motion on our docket sheet for whatever action he deems necessary.

Sincerely,

LYLE W. CAYCE, Clerk

Jann Wynne

By:

Jann M. Wynne, Deputy Clerk
504-310-7688

cc: Mr. Roberto Balli
Ms. Carmen Castillo Mitchell
Mr. John A. Reed

Exhibit #9

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

December 26, 2019

#09838023

Mr. Melodio Reyes
FCI Three Rivers Jim Wells Unit
U.S. Highway 72, W., P.O. Box 4200
Three Rivers, TX 78071-0000

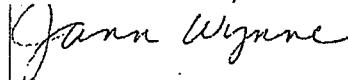
No. 19-40555 USA v. Melodio Reyes
USDC No. 7:19-CR-423-1

Dear Mr. Reyes,

We will take no action on your letter dated December 19, 2019. As you were previously advised in the November 18, 2019 letter, only your attorney can file motions or other documents on your behalf. In light of this, I am taking no action on the letter. Your attorney is advised to review the letter on our docket, for whatever action he deems necessary.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Jann M. Wynne, Deputy Clerk
504-310-7688

cc: Mr. Roberto Balli
Ms. Carmen Castillo Mitchell
Mr. John A. Reed