

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

DOCKET NO. 00-3415

PEDRO SERA,

APPELLANT,

v.

UNITED STATES,

APPELLEE.

BRIEF OF APPELLANT

BRIGGS AND MORGAN, P.A.
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UNITED STATES COURTESOTA0 20 -16.5 TD -0.2619 37980.5326 673(DOCKETavid Philippe

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

This is an appeal of the district court's Order denying Appellant Pedro Sera's ("Sera") motion for reduction of sentence under 28 U.S.C. § 2255. The district court, pursuant to 28 U.S.C. § 2253, certified two issues that it believed raised debatable questions on the § 2255 motion that had been brought by Sera. The first issue is whether Sera received ineffective assistance of counsel based upon this district court's

JURISDICTIONAL STATEMENT

On September 2, 1998, Appellant Pedro Sera was charged with conspiring to

a

Order of the district court that has been certified for appeal by the district court as identified above.

85, at 29). Petitioner was represented in the district court by Paul G. Morreim, Esq. during all stages of the proceedings through and including sentencing. Review of the

motion for such a departure. See July 27, 2000, Order at 5 (citing U.S. SENTENCING GUIDELINES MANUAL § 5K2.0; United States v. Ramirez-Bernal, No. 98-1624, 1999 WL 475565, at *2 (8th Cir. July 7, 1999) (unpublished opinion); United States v. Cruz-Ochoa, 85 F.3d 325, 325-26 (8th Cir. 1996); United States v. Hernandez-Reyes, 114 F.3d 800, 802 (8th WL See

Under the standards set forth by the Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), Appellant must demonstrate both defective performance by counsel and resulting prejudice. Strickland, 466 U.S. at 687. Representation is "defective" if it is shown that the attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Strickland, 466 U.S. at 692. Id. That is, Sera must show that "counsel's representation fell below an objective standard." Id.

hearing on Sera's motion for a two point reduction for a willingness to waive resistance to deportation.

C. THE

In conclusion, Sera requests that the Court reverse the district court's denial of his motion under § 2255 to Vacate, Set Aside, or Modify his sentence based upon his district court counsel's ineffective assistance of counsel by failing to move for Sera for a downward departure based upon his willingness to waive resistance to deportation and based upon a fortuitous increase in the severity of his sentence of 18 months (conclusion