

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-11810
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JANUARY 26, 2012 JOHN LEY CLERK

D.C. Docket Nos. 1:10-cv-21488-KMM,
1:08-cr-20228-KMM-1

ULISES CAO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(January 26, 2012)

Before TJOFLAT, BARKETT and ANDERSON, Circuit Judges.

PER CURIAM:

The Government properly concedes that, in denying petitioner's motion to vacate filed pursuant to 28 U.S.C. § 2255, the district erroneously disregarded *Clisby v. Jones*, 960 F.2d 925, 936 (11th Cir. 1992) (*en banc*), when it failed to address petitioner's claim that he was denied his Fifth Amendment right to due process of law because the Government knowingly presented a witness's perjured testimony. The district court's judgement is accordingly vacated and the case is remanded with the instruction that the district court address the merits of that claim.

VACATED and REMANDED.