

April 11, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-50691  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL SCOTT WILLIS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:00-CR-128-ALL  
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Before JONES, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Michael Scott Willis, pro se federal prisoner # 04279-180, appeals the district court's denial of his "Motion Renewing Objections to Pre-Sentence Report." The district court concluded that it lacked jurisdiction to entertain the motion.

Willis's appellate brief addresses the merits of his underlying claim but does not address the district court's ruling that it lacked jurisdiction. Willis points to no legal authority for the district court to entertain his motion. Thus, Willis has

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

abandoned any argument that the district court's dismissal of his motion for lack of jurisdiction was erroneous. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

Even if we were to construe Willis's motion liberally as seeking relief pursuant to 28 U.S.C. § 2255, such a motion would be successive. Willis's claims do not meet the criteria for filing a successive § 2255 motion because (a) they do not rely on newly-discovered facts that would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty, and (b) they do not rely on a new rule of constitutional law made retroactive by the Supreme Court on collateral review. See §§ 2244(b)(3), 2255; see also In re Elwood, 408 F.3d 211, 213 (5th Cir. 2005) (holding that United States v. Booker, 543 U.S. 220 (2005), provides no basis for a successive § 2255 motion).

Willis has failed to show that his appeal involves "legal points arguable on their merits (and therefore not frivolous)." See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Therefore, we DISMISS the appeal as frivolous.