

**FILED**

August 17, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-41036  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAMON RUNNELS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-02-CR-132-1  
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Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:\*

Damon Runnels, federal prisoner # 68688-079, appeals the district court's denial of his 18 U.S.C. § 3582 motion to reduce his sentence. He renews his argument that the sentencing judge misapplied the sentencing guidelines in his case and contends, for the first time, that, even if the district court lacked the authority to correct his sentence under 18 U.S.C. § 3582, this court has jurisdiction to correct his illegal sentence under 28

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S.C. § 2106. This court will not consider the newly raised argument. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

The district court's denial of Runnels's § 3582 motion is reviewed for an abuse of discretion. See United States v. Pardue, 36 F.3d 429, 430 (5th Cir. 1994). Runnels has failed to demonstrate an abuse of discretion on the district court's part because his motion was not authorized under 18 U.S.C. § 3582(c)(1) or (2) and was untimely under FED. R. CRIM. P. 35(a). To the extent Runnels challenges the district court's refusal to construe the motion as a 28 U.S.C. § 2255 motion, the argument fails because, as the district court determined, Runnels has not alleged any constitutional violation in connection with his sentence. See United States v. Vaughn, 955 F.2d 367, 368 (5th Cir. 1992); see also United States v. Segler, 37 F.3d 1131, 1134 (5th Cir. 1994).

Runnels's appeal is without arguable merit and is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. His motion for leave to submit excerpts of exhibits in support of his appeal is DENIED.