

July 2, 2004

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-30919
c/w No. 03-30942
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD PERNELL GREEN,

Defendant-Appellant.

Appeals from the United States District Court
for the Western District of Louisiana
USDC No. 98-CR-20058-5

Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:*

Ronald Pernell Green, federal prisoner # 09156-035, moves this court to proceed in forma pauperis (IFP) to appeal the denial of a discovery motion for access to, inspection of, and copying of video and audio tapes that had been entered into evidence at his trial. Green also seeks to appeal the denial of a postjudgment motion seeking relief from the denial of his discovery motion.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

It is undisputed that Green had not filed a 28 U.S.C. § 2255 motion prior to the discovery motion. Green's discovery motion and his subsequent motion under FED. R. CIV. P. 60(b)(6) from the denial of the discovery motion are unauthorized and without a jurisdictional basis, and the district court was without jurisdiction to entertain them. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994); United States v. Leon, 203 F.3d 162, 164 (2d Cir. 2000).

As Green has not demonstrated a nonfrivolous issue for appeal, his motion to proceed IFP is DENIED. See FED. R. APP. P. 24(a). Because his appeal is without arguable merit, it is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.