

May 13, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-30855  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFONZO MASON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 3:02-CR-30044-1-RGJ  
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Before DAVIS, SMITH and DENNIS, Circuit Judges

PER CURIAM:\*

Alfonzo Mason, federal prisoner # 10614-035, appeals the district court's denial of his motion for a writ of audita querela wherein he sought to challenge his sentence for conspiracy to possess cocaine base with intent to distribute. Relying upon Blakely v. Washington, 124 S. Ct. 2531 (2004), Mason argues that the district court improperly enhanced his sentence based upon facts to which he did not plead guilty and that were not determined by a jury, in violation of his Fifth and Sixth Amendment rights.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In addition, Mason argues that the actual innocence exception to the procedural default doctrine allows him to pursue the writ.

The writ of audita querela is not available where the prisoner may pursue a remedy under 28 U.S.C. § 2255. United States v. Banda, 1 F.3d 354, 356 (5th Cir. 1993). The fact that the movant cannot meet the requirements for bringing a successive 28 U.S.C. § 2255 motion does not render the 28 U.S.C. § 2255 remedy unavailable. Tolliver v. Dobre, 211 F.3d 876, 878 (5th Cir. 2000).

AFFIRMED.