

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-51189  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LISTON RANDOLPH POSEY, II,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-93-CR-84-ALL  
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April 9, 2001

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Liston Randolph Posey, II, federal prisoner # 02528-095, appeals the district court's denial of his "Rule 35 Motion for Correction of Plain Error." Posey argues that: (1) the forfeiture of his firearms violated his double jeopardy rights; (2) his sentence should be vacated in view of Apprendi v. New Jersey, 530 U.S. 466 (2000); (3) because the indictment did not allege the quantity of marijuana, his conviction must be vacated with prejudice to subsequent prosecution in view of Apprendi; and (4) the district court erred in stating that this court affirmed

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 part and reversed in part in United States v. Posey, 217 F.3d 282 (5th Cir. 2000). The only relief that Posey sought in his motion was an order vacating his conviction and sentence. The district court did not have jurisdiction to grant the relief that Posey sought as it was beyond the scope of this court's remand for return of Posey's property. See United States v. Hass, 199 F.3d 749, 752 (5th Cir. 1999). Therefore, the district court did not err in denying Posey's motion. The Government's motion to dismiss Posey's appeal is granted.

APPEAL DISMISSED; MOTION TO DISMISS GRANTED; ALL OTHER  
OUTSTANDING MOTIONS DENIED.