

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-10789  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus,

JOHNNY LEE REED,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 7:97-CR-18-1-R  
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February 20, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Johnny Lee Reed appeals the district court's denial of his motion to dismiss the indictment against him pursuant to Fed. R. Crim. P. 12(b)(2). He argues that the indictment was unconstitutional because it failed to charge him with possessing a quantity of cocaine.

Under Rule 12(b)(2) motions to dismiss an indictment must be made before trial or they are waived. United States v. Cathey, 591 F.2d 268, 271, n.1 (5th Cir. 1979). Reed's Rule 12(b)(2) motion to dismiss the indictment was filed after his conviction

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

was affirmed on appeal. Because the criminal proceedings were no longer pending, Reed's motion pursuant to Fed. R. Crim. P. 12(b) to dismiss the indictment was unauthorized and without a jurisdictional basis. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994). The district court's denial of Reed's motion to dismiss the indictment is AFFIRMED.