

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40563  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL DEWAYNE ADKISM,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC Nos. 3:00-CV-55 & 3:97-CR-4-1  
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December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Michael DeWayne Adkism, federal prisoner # 06384-078, appeals the district court's denial of his 28 U.S.C. § 2255 motion. Adkism was sentenced to 235 months' imprisonment following his conviction for conspiracy to possess with intent to distribute cocaine base, conspiracy to distribute cocaine base, possession with intent to distribute cocaine base, and distribution of cocaine base, in violation of 21 U.S.C. §§ 841(a)

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and 846. The district court denied Adkism's motion and granted a certificate of appealability on the issue of whether Apprendi v. New Jersey, 530 U.S. 466 (2000), should apply retroactively with respect to an initial challenge to a conviction on collateral review.

The issue is now foreclosed by this court's decision in United States v. Brown, 305 F.3d 304, 310 (5th Cir. 2002), wherein this court held that Apprendi "is not retroactively applicable to initial petitions under § 2255." Accordingly, the district court's judgment denying Adkism's 28 U.S.C. § 2255 motion is affirmed.

In light of the foregoing, Adkism's motions for appointment of counsel and oral argument are denied.

JUDGMENT AFFIRMED; MOTIONS DENIED.