

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40852
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHRISTOPHER LAKENT BURNS,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC Nos. 3:00-CV-22 & 3:97-CR-4-2

February 20, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Christopher Lakent Burns, federal prisoner # 06386-078, appeals the district court's denial of his 28 U.S.C. § 2255 motion. Burns was sentenced to 292 months' imprisonment following his conviction for conspiracy to possess cocaine base with intent to distribute cocaine base and conspiracy to distribute cocaine base in violation 21 U.S.C. § 846. The district court denied Burns's motion and granted a certificate of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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 Burns's 28 U.S.C. § 2255 motion is affirmed.

AFFIRMED.