

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41033
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EARNEST EARL MCLAMB,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-01-CV-498
USDC No. C-92-CR-186-1

February 19, 2003

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

PER CURIAM:*

Earnest Earl McLamb, formerly federal prisoner # 13942-056, seeks a certificate of appealability (COA) and leave to appeal in forma pauperis (IFP), from the dismissal of his action seeking 28 U.S.C. § 2255 and coram nobis relief. The motion for a COA is DENIED because McLamb had served his entire sentence for this conviction before he filed this action. 28 U.S.C. § 2255.

McLamb's request to proceed IFP in appealing the denial of coram nobis relief is DENIED because he is not entitled to such

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

relief. He is relying on the same averments of fact that the district court found unmeritorious at his rearraignment. See United States v. Addonizio, 442 U.S. 178, 186 (1979).

McLamb's appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

COA and IFP DENIED; APPEAL DISMISSED.