

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50777
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM PEARSON KESSLER,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-01-CV-222-DB
USDC No. EP-97-CR-602-DB

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

William Pearson Kessler ("Kessler"), federal prisoner # 81018-080, was sentenced to 130 months imprisonment following his conviction for possession with intent to distribute marijuana and conspiracy to possess with intent to distribute marijuana. He now appeals the district court's denial of his 28 U.S.C. § 2255 motion as untimely. He argues that his 28 U.S.C. § 2255

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion was timely based on Apprendi v. New Jersey, 530 U.S. 466 (2000).

Kessler's Apprendi argument is foreclosed by this court's decision in United States v. Brown, 305 F.3d 304, 310 (5th Cir. 2002), petition for cert. filed, (U.S. Feb. 3, 2003)(No. 02-9606), wherein this court held that Apprendi "is not retroactively applicable to initial petitions under § 2255." Accordingly, the district court's judgment denying Kessler's 28 U.S.C. § 2255 motion is affirmed.

AFFIRMED.