

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

June 19, 2008

No. 07-10743
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

CEDRICK DIGGS

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:01-CR-177-1

Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Cedrick Diggs, federal prisoner # 27072-177, appeals the district court's denial of his request for a writ of audita querela challenging his sentences for conspiracy to obstruct interstate commerce by robbery and using and carrying a firearm during a crime of violence. Diggs argues that the sentences imposed for his crimes were too harsh and that the sentences violated his constitutional rights.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Regardless of the label affixed to Diggs's motion, it was a collateral challenge to the sentences imposed by the district court and therefore fell within the purview of 28 U.S.C. § 2255. See *United States v. Banda*, 1 F.3d 354, 356 (5th Cir. 1993); *Solsona v. Warden, F.C.I.*, 821 F.2d 1129, 1131-32 (5th Cir. 1987). Therefore, *audita querela* was not the proper vehicle for Diggs's claims. See *Banda*, 1 F.3d at 356.

Diggs has previously filed a § 2255 motion. His present motion was successive, and he was required to obtain this court's authorization to file it. See 28 U.S.C. §§ 2244(b)(3), 2255(h). Because he did not do so, the district court properly denied his motion. As Diggs's appeal is without arguable merit, see *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983), it is dismissed as frivolous. See *id.*; 5TH CIR. R. 42.2.

APPEAL DISMISSED.