

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-20298  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARISTEDE MICHAEL JOHNSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-96-CR-176-1  
- - - - -

June 16, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

Aristede Michael Johnson appeals his conviction under 18 U.S.C. § 924(c), using or carrying a firearm during the commission of a crime of violence, on the ground that the district court erred in instructing the jury that armed robbery is a crime of violence. Because he raises this argument for the first time on appeal, it is reviewed for plain error. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994)(en banc).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Johnson has not demonstrated plain error. His argument that the district court's instruction invaded the province of the jury was specifically rejected by this court in United States v. Credit, 95 F.3d 362, 364 (5th Cir. 1996), cert. denied, 117 S. Ct. 1008 (1997)(the issue whether robbery is a crime of violence within the meaning of § 924(c) is a question of law which should not be submitted to the jury).

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

APPEAL DISMISSED.