

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11214
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BARON ELDER,
also known as Beno,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 4:98-CV-1085-Y
4:96-CR-25-28-Y

December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Baron Elder appeals the district court's denial of his 28 U.S.C. § 2255 motion, which challenged his conviction for conspiring to possess cocaine base with intent to distribute. He argues that his sentence is illegal under Apprendi v. New Jersey, 530 U.S. 466 (2000), and that the district court erred in denying him leave to amend his 28 U.S.C. § 2255 motion to add a claim

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

pursuant to Apprendi. Elder's argument is unavailing. Apprendi does not apply retroactively to cases on collateral review. See United States v. Brown, 305 F.3d 304, 310 (5th Cir. 2002). The judgment of the district court is AFFIRMED.