

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20253
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH STAFFORD,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-96-CR-79-1

October 25, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Joseph Stafford, federal prisoner #10454-042, appeals from the February 20, 2001, order that he believes denied his posttrial 1997 motion for a new trial or a judgment of acquittal. We long ago affirmed Stafford's conviction, *United States v. Hull*, 160 F.3d 265 (5th Cir. 1998), and the Supreme Court denied certiorari in 1999. *Stafford v. United States*, 526 U.S. 1136 (1999).

It is unclear whether the district court's stamped denial meant to deny Stafford's 1997 motion on its merits or to deny

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Stafford's implicit 2001 request for any ruling on the motion. Had the motion not been ruled on in March 1997, as it appears to have been, the subsequent notice of appeal would have been ineffective to confer appellate jurisdiction on this court, which decided the direct appeal in 1998. See FED. R. APP. P. 4(b)(2) and (3)(A)(i),(ii). The district court's order of February 20, 2001, does not provide Stafford with a second bite at the appellate apple. This appeal is without arguable merit, is thus frivolous, and is dismissed. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983).

APPEAL DISMISSED AS FRIVOLOUS. 5TH CIR. R. 42.2.