

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-20432  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NHAN KIEM TRAN, also known as Tony Tran,  
also known as Larry Tran, also known as Tony,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-89-CR-135-2  
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April 1, 2002

Before DAVIS, BENAVIDES and CLEMENT, Circuit Judges.

PER CURIAM:\*

Nham Khiem Tran ("Tran"), federal prisoner # 48684-079, appeals the dismissal of his post-conviction motion to dismiss the indictment against him filed pursuant to FED. R. CRIM. P. 12(b)(2). Rule 12(b)(2) motions to dismiss an indictment must be made before trial or they are waived. United States v. Cathey, 591 F.2d 268, 271 n.1 (5th Cir. 1979). Because the criminal proceedings were no longer pending, Tran's motion to dismiss the indictment was unauthorized and without a jurisdictional basis.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994).

The judgment of the district court is AFFIRMED.