

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50040
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEX VOGEL,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-00-CR-203-19

June 19, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Alex Vogel appeals his guilty-plea convictions and sentences for conspiracy to possess cocaine and cocaine base with intent to distribute and possession of cocaine with intent to distribute. As an initial matter, Vogel requests reconsideration of the February 7, 2002, order denying him leave to proceed *pro se* on appeal. As Vogel's motion was filed after his counsel filed the appellate brief, the motion was properly denied as untimely. See United States v. Wagner, 158 F.3d 901, 902-03 (5th Cir. 1998). Vogel's request for reconsideration is DENIED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Vogel alternatively moves to supplement counsel's appellate brief with his *pro se* appellate brief. This motion is DENIED. See Myers v. Johnson, 76 F.3d 1330, 1335 (5th Cir. 1996).

Vogel contends that 21 U.S.C. § 841 is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). As Vogel concedes, his argument is foreclosed by circuit precedent, but he raises the issue to preserve it for Supreme Court review. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000), cert. denied, 532 U.S. 1045 (2001). The judgment of the district court is AFFIRMED.

AFFIRMED; MOTIONS DENIED.