

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50213
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HARRY SCHREIBER,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-95-CR-130-1-JN
USDC No. A-00-CV-816-JN

August 30, 2002

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Harry Schreiber appeals the denial of his motion filed pursuant to 28 U.S.C. § 1651. He was convicted of wire fraud, bankruptcy fraud, and conspiracy to commit wire fraud and bankruptcy

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

fraud in violation of 18 U.S.C. §§ 371, 1343, and 152. His motions for a remand and for expedited consideration are DENIED. Because he is appealing the denial of relief under § 1651, he does not require a certificate of appealability ("COA"), see 28 U.S.C. § 2253(c)(1), so his motion for a COA is DENIED as unnecessary.

Schreiber is not entitled to the relief he seeks under § 1651. Jimenez v. Trominski, 91 F.3d 767, 767-68 & n.1 (5th Cir. 1996); Theriault v. Mississippi, 390 F.2d 657, 657 (5th Cir. 1968). "The writ of coram nobis is an extraordinary remedy available to a petitioner no longer in custody who seeks to vacate a criminal conviction in circumstances where the petitioner can demonstrate civil disabilities as a consequence of the conviction, and that the challenged error is of sufficient magnitude to justify the extraordinary relief." Jimenez, 91 F.3d at 768. "The writ of audita querela . . . permits a petitioner to obtain relief against a judgment based on some legal defense arising after the judgment." Id. Schreiber, however, remains in federal custody and is not relying on a legal defense that arose after the judgment. Id.

The appeal is without merit and is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

APPEAL DISMISSED AS FRIVOLOUS; MOTION FOR COA DENIED AS UNNECESSARY; OTHER MOTIONS DENIED.