

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50779
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GEORGE ROBERT HURLBURT,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-01-CV-221-DB
USDC No. EP-97-CR-602-3-DB

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

George Robert Hurlburt, federal prisoner # 81019-080, was sentenced to 135 months of imprisonment for his conviction of conspiracy to possess with intent to distribute marijuana. Hurlburt appeals the district court's denial of his 28 U.S.C. § 2255 motion as time-barred.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Hurlburt argues that his 28 U.S.C. § 2255 motion was timely based on Apprendi v. New Jersey, 530 U.S. 466 (2000). Hurlburt's argument is foreclosed by United States v. Brown, 305 F.3d 304, 310 (5th Cir. 2002), petition for cert. filed, (U.S. Feb. 3, 2003)(No. 02-9606), which held that Apprendi "is not retroactively applicable to initial petitions under § 2255." The district court did not err in denying Hurlburt's motion.

AFFIRMED.