

August 20, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50263
Conference 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

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Harry Schreiber, federal prisoner # 40454-004, appeals the denial of his "Petition to Dismiss the Order of Restitution." He does not challenge the district court's denial of his other motions in the same order, and any such arguments are deemed abandoned. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Schreiber maintains that the district court wrongly denied his petition to relieve him of restitution payments because the original order was unenforceable. He has not established any authority for challenging the restitution order at this time. See United States v. Hatten, 167 F.3d 884, 886-87 & n.5 (5th Cir. 1999). Although the district court did not conclude that it lacked jurisdiction, this court can affirm on that ground. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994). Because the district court lacked jurisdiction to consider the motion, his appeal is DISMISSED AS FRIVOLOUS.

Schreiber requests appointment of appellate counsel. This motion is DENIED.

Schreiber has previously been warned that the filing of further frivolous appeals could result in the imposition of sanctions. See United States v. Schreiber, No. 00-50572 (5th Cir. Apr. 26, 2001)(unpublished). Schreiber's appeal, as stated above, is frivolous. Therefore, IT IS ORDERED that Schreiber must pay a monetary sanction of \$100 to the clerk of this court. The clerk of this court and the clerks of all courts subject to the jurisdiction of this court are directed to return to Schreiber unfiled any submissions he should make until the fine is paid in full.

APPEAL DISMISSED AS FRIVOLOUS; MOTION FOR APPOINTMENT OF COUNSEL DENIED; SANCTIONS IMPOSED.