

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50589
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY JOSEPH CULLUM,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:88-CR-130-3

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Larry Joseph Cullum, federal prisoner # 48858-080, proceeding pro se, moves for leave to proceed in forma pauperis (IFP) on appeal. Cullum seeks to appeal the district court's order denying his "Request for Leave to File a Motion for Nunc Pro Tunc Amended Judgment Pursuant to the F.R.Civ.P. Rule 60(b)(4) & (6)." In that motion, Cullum argued that his sentence for conspiracy to distribute methamphetamine, manufacturing phenylacetone, and filing false tax returns was illegal under

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Booker, 543 U.S. 220 (2005), Blakely v. Washington, 542 U.S. 296 (2004), and Apprendi v. New Jersey, 530 U.S. 466 (2000). Cullum's IFP motion is a challenge to the district court's certification that his appeal is not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). For the reasons that follow, Cullum's IFP motion is denied.

Cullum's request is correctly characterized as a successive 28 U.S.C. § 2255 motion. See, e.g., United States v. Rich, 141 F.3d 550, 551-52 (5th Cir. 1998); 28 U.S.C. §§ 2244(b)(3)(A), 2255. Because Cullum has neither sought nor obtained from this court authorization to file a successive § 2255 motion, his appeal is frivolous and is hereby dismissed. See 5TH CIR. R. 42.2. Cullum is warned that the filing of another frivolous pleading in this court will result in the imposition of sanctions.

IFP DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.