

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

December 7, 2009

Charles R. Fulbruge III  
Clerk

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No. 09-10161  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DANIEL A FISHER,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:04-CR-172-1

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Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Daniel A. Fisher, federal prisoner # 32412-177, appeals the district court's dismissal of his postconviction motion to dismiss the superseding indictment. In that motion, Fisher argued that venue was not proper in the Northern District of Texas, and the district court therefore lacked jurisdiction to convict him. On appeal, Fisher argues that the district court wrongly determined that he did not allege a valid jurisdictional basis for his motion. He asserts that the district court had the inherent authority to vacate

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

his conviction and that his motion arose under the All Writs Act, FED. R. CIV. P. 60(b), and FED. R. CRIM. P. 18.

Fisher has not asserted a basis for the district court to invoke its inherent authority to vacate his conviction, and his motion was not authorized by any of the legal authorities under which he contends his motion arose. The unauthorized motion therefore was without a jurisdictional basis. *See United States v. Early*, 27 F.3d 140, 141-42 (5th Cir. 1994). Thus, because the instant appeal is from the denial of an unauthorized motion, it is dismissed as frivolous. *See* 5TH CIR. R. 42.2; *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Fisher's motions for a writ of mandamus, to expedite his appeal, to remand this case to the district court, and for the appointment of counsel are denied.

APPEAL DISMISSED; MOTIONS DENIED.