

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2009

Charles R. Fulbruge III
Clerk

No. 09-40517

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL JOSEPH DERROW,

Defendant-Appellant

Appeals from the United States District Court
for the Eastern District of Texas
USDC No. 9:98-CR-6-9

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Michael Joseph Derrow, federal prisoner # 03199-286, seeks leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his motion to correct illegal sentence pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Derrow also moves for the appointment of counsel. Derrow previously filed a 28 U.S.C. § 2255 motion, challenging his conviction and sentence for conspiracy to possess with the intent to distribute crack cocaine and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

possession with the intent to distribute crack cocaine. His § 2255 motion was denied, and his motion for a certificate of appealability was denied by this court.

In order to obtain leave to proceed IFP, Darrow must show that he is a pauper, and he must raise a nonfrivolous issue. *See Jackson v. Dallas Police Dep't*, 811 F.2d 260, 261 (5th Cir. 1986). Darrow argues that his sentence is unconstitutional under *Apprendi*, his counsel was ineffective in failing to raise the issue on appeal, and the district court erroneously denied his motion. Darrow's motion filed in the district court was an unauthorized motion which the district court was without jurisdiction to entertain. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). Darrow's appeal is without arguable merit and is thus frivolous. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983).

Accordingly, Darrow's request for leave to proceed IFP is DENIED. His motion for appointment of counsel is also DENIED, and the appeal is DISMISSED. *See* 5TH CIR. R. 42.2.