

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 17, 2011

Lyle W. Cayce  
Clerk

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No. 10-11007  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DOUGLAS RAY DUNKINS, JR., also known as Little Doug,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:92-CR-10-3

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Before BENAVIDES, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Douglas Ray Dunkins, Jr., federal prisoner # 22619-077, was convicted of conspiracy to possess with intent to distribute and to distribute cocaine and to manufacture cocaine base, to possess with intent to distribute, and to distribute cocaine base; and of use of a firearm during and in relationship to a drug trafficking crime. He was sentenced to life imprisonment on the conspiracy count and to a consecutive term of five years of imprisonment on the firearm count. *See United States v. Fisher*, 22 F.3d 574, 575-76 (5th Cir. 1994).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

## No. 10-11007

In October 2008, the district court denied Dunkins's "motion to unfile the original application and affidavit for the search warrant" that had been filed in his criminal case in 1991 because it lacked the judicial officer's signature. On appeal, this court found that this was a meaningless, unauthorized motion with no jurisdictional basis and dismissed the appeal for lack of jurisdiction. *United States v. Dunkins*, No. 08-11033 (5th Cir. Dec. 4, 2008) (unpublished).

Dunkins seeks a certificate of appealability (COA) to appeal the district court's denial of his motion filed pursuant to Federal Rule of Civil Procedure 60(b) challenging the October 2008 ruling. Because neither the motion to unfile nor the Rule 60(b) motion was filed in a habeas case, a COA is DENIED AS UNNECESSARY. *See* 28 U.S.C. § 2253(c)(1)(A); *Ochoa Canales v. Quarterman*, 507 F.3d 884, 888 (5th Cir. 2007).

In addition he moves for leave to proceed in forma pauperis (IFP) on appeal. The district court denied Dunkins's IFP motion and certified that his appeal was not taken in good faith because he failed to present a nonfrivolous, arguable issue for appeal. By moving for leave to proceed IFP on appeal, Dunkins is challenging the district court's certification. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); FED. R. APP. P. 24(a)(5). Dunkins has failed to show that his appeal from the denial of the Rule 60(b) motion involves "legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir.1983) (internal quotation marks omitted). Accordingly, his motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2. Dunkins is WARNED that filing further frivolous appeals will subject him to sanctions.