

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

No. 16-51151
Summary Calendar

United States Court of Appeals
Fif h Circuit

FILED

March 13, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSHUA CONLAN, also known as Joco,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:11-CR-451-1

Before JONES, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:*

Joshua Conlan appeals the district court's denial of his motion for a new trial based on new evidence under Federal Rule of Criminal Procedure 33(b)(1). He also moves for release on bail pending appeal. Conlan is serving a 96-month prison sentence for interstate stalking. He contends that new evidence shows that he and the stalking victim were in a dating relationship. He fails to show that the evidence could not have been previously discovered through due

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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diligence. *See United States v. Freeman*, 77 F.3d 812, 817 (5th Cir. 1996). Moreover, his contention that the evidence would produce an acquittal is thoroughly refuted by the entire body of trial evidence and is thus so devoid of arguable merit as to be frivolous. *See id.*; *United States v. Conlan*, 786 F.3d 380, 384-85 (5th Cir. 2015); *see also Texas v. United States*, 808 F.3d 675, 676 (5th Cir. 2015).

Accordingly, the appeal is DISMISSED AS FRIVOLOUS, and the bail motion is DENIED AS MOOT.