

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-11004  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS FREDRICK MCBRIDE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:97-CR-32-1-BE  
- - - - -

June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). We conclude that we are without jurisdiction in this criminal misdemeanor case.

A federal magistrate judge's judgment of conviction and sentence may be appealed only to a federal district court. 18 U.S.C. § 3402; Fed. R. Crim. P. 58(g)(2); see United States v. Baxter, 19 F.3d 155, 156 (4th Cir. 1994). Accordingly, we lack

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

jurisdiction.

This appeal is transferred to the district court rather than dismissed for lack of jurisdiction. Pursuant to 28 U.S.C. § 1631, this court has the power to transfer an appeal, if it is in the interest of justice, to that court which, on the day that the appeal was filed, had jurisdiction over the matter. See In re Exclusive Indus. Corp., 751 F.2d 806, 808-09 (5th Cir. 1985). It is in the interest of justice to transfer the appeal because, if the appeal were dismissed, the defendant would be denied the opportunity to appeal his criminal conviction and sentence. Any appeal to the district court at this time would not be taken within ten days of entry of judgment as required by Rule 58(g)(2)(B).

IT IS ORDERED that the appeal is TRANSFERRED to the United States District Court for the Northern District of Texas.