

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41181
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WARREN D. FRIDAY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-94-CR-118-1
- - - - -

June 16, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Warren D. Friday, prisoner # 769616, appeals the revocation of his supervised-release term, which was part of his sentence for his conviction for possession of marihuana. The Government's motion to supplement the record on appeal is DENIED. Friday argues for the first time on appeal that his release date was incorrectly calculated, and the violations of supervised release to which he pleaded true occurred after his term of supervised release had expired. He contends that the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

therefore lacked jurisdiction to impose on him a ten-month sentence for the alleged violations of the terms of his release.

Questions of fact that could have been resolved by the district court can never be plain error. United States v. Vital, 68 F.3d 114, 119 (5th Cir. 1995). The determination of release dates involves factual, not legal, questions. United States v. Marshall, 910 F.2d 1241, 1245 (5th Cir. 1990). This court need not address Friday's claim. Id.

This appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is hereby DISMISSED. 5th Cir. R. 42.2.

MOTION TO SUPPLEMENT THE RECORD ON APPEAL DENIED. APPEAL DISMISSED.