

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10407
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY GENE POWELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:98-CR-242-1-R

April 11, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

Larry Gene Powell pleaded guilty to one count of conspiring to use the mail with the intent to commit murder-for-hire in violation of 18 U.S.C. § 1958. Following his conviction and sentencing, Powell filed, pro se, a document entitled "JUDICIAL NOTICE DEFENDANTS CLAIM OF MANIFEST INJUSTICE-VOIDS & WITHDRAWS GUILTY PLEA" on the same day he filed a notice of appeal from the judgment of conviction. The district court denied Powell's claim, but he did not file a notice appeal from that denial.

We do not have jurisdiction over Powell's appeal because

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Powell has failed to file a notice of appeal regarding the denial of this claim. See United States v. Carr, 979 F.2d 51, 55 (5th Cir. 1992). Although Powell filed three notices of appeal, each of these notices designated other rulings as the subject of the appeal but failed to specify the denial of the postjudgment motion as is required to invoke our jurisdiction. Fed. R. App. P. 3(c)(1)(B).

Furthermore, Powell's motion, which is construed as a motion to withdraw his guilty plea, was unauthorized and without a jurisdictional basis. See United States v. Early, 27 F.3d 140, 141 (5th Cir. 1994). After sentencing, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255. Id. Accordingly, the district court lacked jurisdiction to entertain the filing. United States v. Cook, 670 F.2d 46, 48 (5th Cir. 1982).

As Powell does not brief any issues other than the denial of the motion to withdraw his plea, they are deemed abandoned. See United States v. Heacock, 31 F.3d 249, 258 (5th Cir. 1994); see also Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993)(only issues presented and argued in the brief are addressed on appeal).

This appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). It is therefore DISMISSED. 5th Cir. R. 42.2. Counsel is warned that pursuing frivolous appeals invites the imposition of sanctions. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994).

APPEAL DISMISSED; SANCTION WARNING ISSUED.