

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50838
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEVENSTON HALL,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-98-CR-6-ALL

- - - - -
October 18, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Levenston Hall, federal prisoner # 82299-080, appeals the district court's denial of a postconviction motion that he characterized as a "Notice of Ex Parte Petition: Ex Parte Petition Re: Fraud on the Court; Request for Summary Judgment." Hall's motion was filed in the district court as part of the criminal proceeding that resulted in his conviction for possession of cocaine base with intent to distribute. On appeal, Hall argues that (1) the district court erred when it failed to observe that the Fourth Amendment requires a warrantless search

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

be based on probable cause; (2) the district court erred by not suppressing the fruits of an illegal search and by imposing a two-level increase for Hall's role as a leader or organizer; and (3) the prosecutor misled the jury with false statements and misconduct. He does not brief any of the issues raised in his original postconviction motion. As such, these issues are deemed abandoned. See *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

In a separate motion, Hall insists that his postconviction motion should be construed as a motion to arrest judgment. However, a Fed. R. Crim. P. 34 motion to arrest judgment must be filed within seven days after the verdict or within such further time as the court may fix during the seven-day period. Hall did not file his ex parte motion until almost nine months after the verdict, and the district court did not grant leave for a Rule 34 motion to be filed at a later date. As such, the district court was without jurisdiction to entertain Hall's postconviction motion. See *Massicot v. United States*, 254 F.2d 58, 61 (5th Cir. 1958). Accordingly, the district court's denial of Hall's postconviction motion is AFFIRMED. See *Bickford v. International Speedway Corp.*, 654 F.2d 1028, 1031 (5th Cir. 1981)(this court may affirm on grounds different from those employed by the district court). His motion on appeal is DENIED.