

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21020
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUMALDO SOLIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-94-CR-272-14

August 20, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Rumaldo Solis, federal prisoner #66932-079, appeals the denial of his FED. R. CRIM. P. 12(b)(2) motion. He has also moved this court to dismiss his appeal without prejudice.

Solis challenges the indictment on the bases that it failed to cite the statutes under which he was indicted, it omitted the time parameters during which the conspiracy was alleged to have occurred, and it did not explicitly state the amount of drugs

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

with which he was charged. Jurisdiction did not lie in the district court under Rule 12(b)(2), however, because none of these allegations amounts to a claim that the indictment failed to charge an offense. Therefore, he was required to raise these alleged defects pretrial. See FED. R. CRIM. P. 12(b)(2); United States v. Freeman, 619 F.2d 1112, 1118 (5th Cir. 1980) (contention that the indictment lacked the specificity required by the Sixth Amendment was waived by failure to object before trial).

Solis's motion to dismiss the indictment was thus unauthorized and without a jurisdictional basis. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994) (noting that district court should have dismissed unauthorized postconviction motion for lack of jurisdiction). This appeal is without arguable merit and therefore dismissed as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

APPEAL DISMISSED; MOTION TO DISMISS APPEAL DENIED.