

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-60981
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY BUCKHALTER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:01-CV-258-GR

October 9, 2002

Before JONES, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

Anthony Buckhalter, federal prisoner #02649-043, appeals from the denial of his motion to reconsider his motion to amend or correct an imposed sentence pursuant to 28 U.S.C. § 3582(c)(2). He also moves for a certificate of appealability ("COA") in order to appeal the denial of his 28 U.S.C. § 2255 motion.

Buckhalter's motion for reconsideration was not timely filed. See United States v. Brewer, 60 F.3d 1142, 1143-44 (5th

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cir. 1995). The district court therefore did not err by denying his motion for reconsideration. See United States v. Miramontez, 995 F.2d 56, 58 n.2 (5th Cir. 1993). Accordingly, the district court's judgment of denial as to Buckhalter's motion for reconsideration is AFFIRMED.

In his request for COA, Buckhalter alleges various constitutional violations based upon Apprendi v. New Jersey, 530 U.S. 466 (2000). Assuming that Apprendi were retroactively applicable, Apprendi would not provide Buckhalter any relief because any error in failing to submit the drug quantity to the jury was harmless in light of the evidence of drug quantity produced at trial. See United States v. Peters, 283 F.3d 300, 313-14 (5th Cir. 2002). Because he has failed to make a substantial showing of the denial of a constitutional right, his motion for COA is DENIED. See 28 U.S.C. § 2253(c)(2).

AFFIRMED; COA DENIED.