

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

October 6, 2021

Lyle W. Cayce  
Clerk

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No. 21-40040  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

MICHAEL JASON SHELTON,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:19-CR-67-1

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Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:\*

Appealing the judgment in a criminal case, Michael Jason Shelton argues that his trial counsel rendered ineffective assistance by failing to challenge the timeliness of Counts One through Three of the superseding indictment, which charged him with aiding and abetting second degree

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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murder, conspiracy to commit murder, and accessory after the fact to murder, and by failing to challenge Counts One through Three of the second superseding indictment, which charged him with aiding and abetting first degree murder, conspiracy to commit murder, and accessory after the fact to murder. The Government moves for summary affirmance or dismissal, arguing that the record has not been sufficiently developed to consider the ineffective assistance claim on direct appeal. Alternatively, the Government moves for an extension of time to file its appellate brief.

The record is not sufficiently developed to allow fair consideration of Shelton's ineffective assistance claim, and, therefore, we decline to consider it without prejudice to any right that Shelton has to assert it on collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014).

Accordingly, the Government's motion for dismissal is GRANTED, and the appeal is DISMISSED. Summary affirmance is DENIED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's alternative motion for an extension of time to file a brief is likewise DENIED.