

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11184
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHELBY LEE DANIELS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:99-CR-98-1-T

April 10, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Shelby Lee Daniels, federal prisoner #22481-077, appeals the district court's denial of his Fed. R. Crim. P. 12(b)(2) motion to dismiss the indictment, which was filed after Daniels had noticed his appeal from his judgment of conviction. Daniels' timely notice of appeal from his judgment of conviction divested the district court of jurisdiction to address the Fed. R. Crim. P. 12(b)(2) motion. See United States v. Hitchmon, 602 F.2d 689, 692 (5th Cir. 1979)(en banc). Accordingly, we AFFIRM the district court's denial of the motion to dismiss the indictment

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

on the ground that the district court was without jurisdiction to consider the motion.

AFFIRMED.