

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-41481
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROY MILES,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 3:97-CR-5-8

August 20, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Roy Miles ("Miles"), federal prisoner # 06402-078, appeals the denial of his post-conviction motion to dismiss the indictment pursuant to FED. R. CRIM. P. 12(b)(2). Motions to dismiss the indictment pursuant to FED. R. CRIM. P. 12(b)(2) must be made before trial or they are waived. United States v. Cathey, 591 F.2d 268, 271 n.1 (5th Cir. 1979). Because the criminal proceedings were no longer pending, Miles' motion to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismiss the indictment was unauthorized and without a jurisdictional basis. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994). The judgment of the district court is AFFIRMED.