

March 3, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40486
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PAUL TERRELL THOMAS,

Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of Texas
USDC No. 1:00-CR-32-3

Before REAVLEY, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

Paul Terrell Thomas, federal prisoner No. 97156-079, has appealed the district court's denial of his motion for permission to file an out-of-time appeal from the denial of a motion for FED. R. CIV. P. 60(b) relief from his criminal conviction. Rule 60(b) does not provide a basis for relief from judgment in a criminal case. United States v. O'Keefe, 169 F.3d 281, 289 (5th Cir. 1999). Thomas's motion did not sound as a collateral challenge to his conviction or seek post-conviction relief by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

any of the avenues authorized by the Federal Rules of Criminal Procedure. See Castro v. United States, ___ U.S. ___, 124 S. Ct. 786, 789 (2003); FED. R. CRIM. P. 33-36. As the motion was unauthorized and without a jurisdictional basis, Thomas has appealed from the denial of a meaningless motion. See United States v. Early, 27 F.3d 140, 141-42 (5th Cir. 1994).

Thomas's appeal is without arguable merit. Accordingly, the appeal is DISMISSED AS FRIVOLOUS. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The dismissal of this appeal counts as a strike for purposes of 28 U.S.C. § 1915(g). Thomas is warned that should he accumulate three strikes for purposes of 28 U.S.C. 1915(g), he will be unable to proceed in forma pauperis in any civil action or appeal unless he is under imminent danger of serious physical injury.

APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS WARNING ISSUED.