

October 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10382
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARY DONNELL SIMMONS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:02-CR-155-2-G

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Gary Donnell Simmons, federal prisoner #28403-177, appeals the district court's denial of his post-judgment motion seeking removal from his presentence report of the notation of a conviction in December 1980 for aggravated assault with a deadly weapon, for which he received no criminal history points. Simmons has appealed from the denial of a meaningless, unauthorized motion. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

This appeal is without arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. Accordingly, the Government's motion to dismiss the appeal as frivolous is GRANTED. Simmons is warned that he will be subject to sanctions if he makes any further frivolous filings. APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.