

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-31321  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH E. FRYAR,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Eastern District of Louisiana  
USDC No. 95-CA-3549

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JULY 17, 1996

Before JOLLY, JONES, and STEWART, Circuit Judges.

PER CURIAM:\*

Joseph E. Fryar, #06590-035, appeals the district court's dismissal of his 28 U.S.C. § 2255 motion for abuse of the procedure and the denial of his motion for leave to proceed in forma pauperis on appeal, pursuant to 28 U.S.C. § 1915(a). Fryar argues that the district court lacked territorial jurisdiction over the 31 U.S.C. §§ 5313(a) and 5322(b) offenses for failure to file a currency transaction report.

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\*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Fryar has failed to show cause for not raising his claim in his previous motion; therefore, this court need not consider whether there is prejudice. See United States v. Flores, 981 F.2d 231, 234-35 (5th Cir. 1993). Further, failure to hear his claim would not result in a fundamental miscarriage of justice because he has not asserted his innocence. See Sawyer v. Whitley, 505 U.S. 333, 339 (1992). The district court did not abuse its discretion in dismissing Fryar's second § 2255 motion as abusive.

The district court did not err in denying Fryar's motion for leave to proceed IFP because he can present no legal points arguable on their merits. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

A F F I R M E D.