

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10941
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELBERT DOUGLAS, JR.,
a/k/a Junior,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-141-Y-03

- - - - -
February 21, 1997

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

The district court did not abuse its discretion by denying the motion for a new trial based upon newly discovered evidence filed by Elbert Douglas, Jr., federal prisoner # 23814-077. United States v. Freeman, 77 F.3d 812, 817 (5th Cir. 1996). Despite Douglas's characterization of his motion, the motion is not based on newly discovered evidence, and it was not timely filed in the district court. FED. R. CRIM. P. 33. Douglas's

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

motion to appeal in forma pauperis is DENIED and the appeal is DISMISSED. Jackson v. Dallas Police Dept, 811 F. 2d 260, 261 (5th Cir. 1986); Howard v. King, 707 F.2d 215, 219- 20 (5th Cir. 1983); 5th Cir. R. 42.2. Douglas's motion for reconsideration of the denial of a waiver of this court's requirements for appellate briefs is DENIED.