

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20320

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY D. BROWN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-97-CV-1410
- - - - -

October 2, 1998

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Larry Brown, federal prisoner # 59615-079, appeals the district court's denial of his motion to modify the terms of his fine. Brown filed his notice of appeal more than 10 days after the district court's order denying his motion. His appeal from the denial of that motion is DISMISSED as untimely. See Fed. R. App. P. 4(b).

Brown seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion. He argues that he received ineffective assistance of counsel based

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

upon his attorney's failure to argue on appeal that the sentencing court 1) erred by holding Brown accountable for 20 grams of cocaine because the evidence did not indicate that he had the ability to purchase that large a quantity and 2) should have granted a downward departure from the Sentencing Guidelines range based upon sentencing entrapment.

In order to obtain a COA, Brown must make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Brown has not made such a showing with any of the issues he raises. Accordingly, COA is DENIED.