

February 7, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10349
Summary Calendar

ALLAN RAY MCFARLAND,

Petitioner-Appellant,

versus

COLE JETER, Warden, FCI-Fort Worth,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CV-28

Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

Allan Ray McFarland, federal prisoner # 40015-080, filed a 28 U.S.C. § 2241 petition challenging the 60-month sentence he received following his guilty plea conviction for being a felon in possession of a firearm. Because McFarland did not meet the requirements for proceeding under the "savings clause" of 28 U.S.C. § 2255, the district court dismissed his petition for lack of jurisdiction. McFarland timely appealed and has moved for a certificate of appealability (COA) and the appointment of counsel.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

A COA is not required for McFarland to proceed on appeal. See Jeffers v. Chandler, 253 F.3d 827, 830 (5th Cir. 2001). McFarland concedes that the district court correctly dismissed his § 2241 petition for lack of jurisdiction. He argues, however, that the Antiterrorism and Effective Death Penalty Act (AEDPA) is unconstitutional because it violates the Suspension Clause. This court has rejected the contention that the AEDPA violates the Suspension Clause. See Turner v. Johnson, 177 F.3d 390, 392-93 (5th Cir. 1999).

The judgment of the district court is AFFIRMED. McFarland's motion for a COA is DENIED AS UNNECESSARY. His motion for the APPOINTMENT OF COUNSEL is also DENIED.