

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 01-41008  
Conference Calendar

---

RANDY JOE WHITE,

Petitioner-Appellant,

versus

ERNEST V. CHANDLER,

Respondent-Appellee.

-----  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:01-CV-325  
-----

February 20, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Randy Joe White, federal prisoner # 61041-180, appeals the denial of his 28 U.S.C. § 2241 petition. He argues that his sentence was improperly enhanced by his prior burglary conviction under the Sentencing Guidelines because that conviction was not a "crime of violence" within the meaning of the Armed Career Criminals Act. White does not renew his challenge to his sentence and indictment based on Apprendi v. New Jersey, 530 U.S. 466 (2000), and that claim is waived. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993).

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

White's challenge to the calculation of his sentence under the guidelines is a nonconstitutional one which could have been raised on direct appeal and thus could not have been considered in a § 2255 motion. See United States v. O'Keefe, 169 F.3d 281, 289 (5th Cir. 1999); United States v. Towe, 26 F.3d 614, 616 (5th Cir. 1994). Because he could not raise it a § 2255 motion, a *fortiori*, White is precluded from raising the claim in this § 2241 petition. The district court's dismissal of the petition is therefore AFFIRMED.