

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50809
Conference Calendar

RUBEN GALLEGOS,

Petitioner-Appellant,

versus

TROY WILLIAMSON, Federal Correctional
Institution La Tuna, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-01-CV-279-DB

February 20, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Ruben Gallegos, federal prisoner # 25039-077**, challenges the district court's dismissal of his 28 U.S.C. § 2241 petition, in which he asserted that his sentence violated Apprendi v. New Jersey, 530 U.S. 466 (2000). The district court determined that Gallegos failed to make the requisite showing under 28 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** The prison number on Gallegos's § 2241 petition is #63385-080, however, his brief on appeal and this court's docket sheet reflect that # 25039-077 is his prison number.

§ 2241 that relief under 28 U.S.C. § 2255 was inadequate and dismissed his petition.

As the district court determined, 28 U.S.C. § 2255 provides the primary means of collaterally attacking a federal conviction and sentence. Tolliver v. Dobre, 211 F.3d 876, 877 (5th Cir. 2000). Gallegos does not present a prima facie Apprendi claim because the 188-month sentence he received does not exceed the 240-month, (20-year) statutory maximum for a cocaine-base-distribution offense involving unaggravated drug quantities. See 21 U.S.C. § 841(b)(1)(C). Apprendi thus does not apply. See United States v. Doggett, 230 F.3d 160, 165 (5th Cir. 2000), cert. denied, 121 S. Ct. 1152 (2001). That being so, Gallegos has not demonstrated any error in the district court's judgment, and the judgment is AFFIRMED.