

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-51123  
Conference Calendar

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MARAT BALAGULA,

Petitioner-Appellant,

versus

R. D. MILES, Warden,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-01-CV-380-JN  
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June 18, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Marat Balagula, federal prisoner No. 35664-066, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition challenging the enhancement of his sentence under the Sentencing Guidelines in light of Apprendi v. New Jersey.\*\* Balagula argues that his challenge to his sentence properly sounds under

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

\*\* 530 U.S. 466 (2000).

§ 2241; thus, he contends that the district court erred by analyzing his claims under the savings clause of 28 U.S.C.

§ 2255. Balagula argues that Apprendi dictates that he is actually innocent of his enhanced sentence and that the district court lacked jurisdiction to impose the enhanced sentence because the conduct on which the enhancement was based was not alleged in the indictment.

Balagula's sentence does not violate Apprendi because his consecutive sentences are within the statutory maximum for his offense. United States v. Keith, 230 F.3d 784, 787 (5th Cir. 2000), cert. denied, 531 U.S. 1182 (2001). As there is no Apprendi violation, the district court did not err by dismissing Balagula's petition.

AFFIRMED.