

April 21, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-10014  
Conference Calendar

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WILLIAM HERBERT HARWOOD,

Petitioner-Appellant,

versus

L.E. FLEMING, Warden, Federal Medical Center -- Fort Worth,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:03-CV-1437-A  
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Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:\*

William Herbert Harwood, federal prisoner # 03210-063, convicted in Oklahoma and incarcerated in Texas, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition challenging his 18 U.S.C. § 924(c) conviction. The district court determined that Harwood failed to satisfy the requirements of 28 U.S.C. § 2255's savings clause to allow him to raise his 28 U.S.C. § 2255 claim in a 28 U.S.C. § 2241 petition.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Harwood argues that, in light of Bailey v. United States, 516 U.S. 137 (1995), he was convicted based upon conduct no longer criminal under 18 U.S.C. § 924(c); that this claim was foreclosed by Tenth Circuit precedent at the time of his conviction; and that he cannot raise the claim in a successive 28 U.S.C. § 2255 motion because Bailey did not create a new rule of constitutional law. Harwood filed 28 U.S.C. § 2255 motions in 1996 and 1998, after Bailey was decided. He has not shown that the claim was foreclosed by circuit law at the time he filed his prior 28 U.S.C. § 2255 motions, and he therefore has not shown that 28 U.S.C. § 2255 "is inadequate or ineffective to test the legality of his detention." Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001); 28 U.S.C. § 2255.

AFFIRMED.