

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-10157
Conference Calendar

GEORGE D. FARQUHAR,

Petitioner-Appellant,

versus

K.J. WENDT, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:03-CV-1873-L

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

George D. Farquhar, federal prisoner # 28074-077, appeals the district court's denial of his 28 U.S.C. § 2241 petition challenging his conviction for mail fraud. He argues that he is entitled to proceed pursuant to § 2241 because the 28 U.S.C. § 2255 remedy is inadequate given that his claims could not be raised in a successive § 2255 motion and, further, because Neder v. United States, 527 U.S. 1 (1999) establishes that he was convicted of a nonexistent offense.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 prior unsuccessful § 2255 motion, or the inability to meet the requirements for filing a successive § 2255 motion, does not make the § 2255 remedy inadequate, however. See Tolliver v. Dobre, 211 F.3d 876, 878 (5th Cir. 2000). Additionally, Farquhar cannot show that his claims were foreclosed at the time of his § 2255 motion because Neder was decided before that filing. See Reyes-Requena v. United States, 243 F.3d 893, 903-04 (5th Cir. 2001); Neder, 527 U.S. at 1. Farquhar therefore has not shown the § 2255 remedy inadequate, and he cannot proceed pursuant to § 2241.

AFFIRMED.