

FILED

August 18, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-10351
Conference Calendar

DOMINGO RODRIGUEZ,

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-2443-N

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Domingo Rodriguez, prisoner number 66479-079, was convicted of conspiracy to possess cocaine with intent to distribute and sentenced to 240 months in prison and a ten-year term of supervised release. Rodriguez filed a purported 28 U.S.C. § 2241 petition to challenge this sentence. The district court determined that Rodriguez's purported 28 U.S.C. § 2241 petition was best construed as a 28 U.S.C. § 2255 motion and dismissed it. Rodriguez now appeals that dismissal. He argues that he should

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

be permitted to proceed under 28 U.S.C. § 2241 because he is actually innocent of a state conviction that was used to enhance his federal sentence.

The district court's findings of fact are reviewed for clear error, and issues of law are reviewed de novo. Jeffers v. Chandler, 253 F.3d 827, 830 (5th Cir. 2001). Rodriguez has not shown that the district court erred in construing his pleading as a 28 U.S.C. § 2255 motion that should be dismissed for want of jurisdiction. See Tolliver v. Dobre, 211 F.3d 876, 877-78 (5th Cir. 2000); Cox v. Warden, Fed. Detention Ctr., 911 F.2d 1111, 1113 (5th Cir. 1990); Solsona v. Warden, 821 F.2d 1129, 1132 (5th Cir. 1987). The judgment of the district court is AFFIRMED.