

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41242
Conference Calendar

ROY LEE RUSSELL,

Petitioner-Appellant,

versus

CONSTANCE REESE,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:04-CV-503-TH-ESH

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Roy Lee Russell, federal prisoner # 21767-009, appeals the dismissal of his 28 U.S.C. § 2241 petition challenging the 110-month sentence imposed following his jury trial conviction for obstruction of justice and perjury. Russell argues that his sentence was unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000) and Blakely v. Washington, 542 U.S. 296 (2004) because it was based on drug quantities not determined by the jury. He contends that he is entitled to seek relief under § 2241 because 28 U.S.C. § 2255 offers an inadequate remedy.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Russell's petition challenges errors that occurred at sentencing, the claim may not be brought in a § 2241 petition. See Padilla v. United States, 416 F.3d 424, 426-27 (5th Cir. 2005). Russell's argument that he is entitled to proceed under § 2241 based on the savings clause of § 2255 because relief under that section is "inadequate or ineffective" is unavailing. Id. at 427. The district court's judgment is AFFIRMED.