

April 17, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10098
Conference Calendar

BENNIE EARL STEPHENS,

Petitioner-Appellant,

versus

DAN JOSLIN,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:05-CV-1218

Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Bennie Earl Stephens, federal prisoner # 32941-077, appeals the dismissal with prejudice of his 28 U.S.C. § 2241 petition. Stephens challenged his conviction and sentence for conspiracy to distribute a controlled substance.

Stephens fails to identify error in the district court's findings that his claims fail to satisfy the savings clause of 28 U.S.C. § 2255 and that United States v. Booker, 543 U.S. 220 (2005), is not retroactively applicable to cases on collateral review. When an appellant fails to identify error in the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court's decision, it is as if the appellant had not appealed that judgment. Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Stephens's appeal is therefore DISMISSED as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).