

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED
July 24, 2012

No. 11-41061
Summary Calendar

Lyle W. Cayce
Clerk

JOHN WESLEY HARRIS,

Petitioner-Appellant

v.

JOHN B. FOX,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:11-CV-292

Before SMITH, DeMOSS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

John Wesley Harris, federal prisoner # 66693-179, appeals the dismissal of his 28 U.S.C. § 2241 petition challenging his conviction in the Eastern District of North Carolina for conspiracy to distribute controlled substances. Currently incarcerated in the Eastern District of Texas, he argues that his indictment is fatally flawed, thereby establishing that he is actually innocent and the convicting court lacked subject matter jurisdiction. Reviewing the district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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court's dismissal de novo, *Kinder v. Purdy*, 222 F.3d 209, 212 (5th Cir. 2000), we affirm.

Harris's § 2241 petition challenges trial errors and thus is properly construed as a 28 U.S.C. § 2255 motion. He may therefore proceed via § 2241 only if he demonstrates that § 2255 relief would be ineffective or inadequate. *See Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001). Harris, however, has not alleged or established that his claims of actual innocence and lack of subject matter jurisdiction--predicated on allegations of a fatally defective indictment--are either based upon a retroactive Supreme Court decision establishing that he was convicted of a nonexistent offense or were foreclosed by circuit law at the time of his trial, appeal, or § 2255 motion. *See Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). He has therefore shown no error on the part of the district court in dismissing his petition.

AFFIRMED.