

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5306
Conference Calendar

LYNDON TEAFATILLER,

Petitioner-Appellant,

versus

U.S. JUSTICE DEPARTMENT
ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:93cv46

(March 22, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that Lyndon Teafatiller's motion for leave to appeal in forma pauperis (IFP) is DENIED. The appeal lacks arguable merit and is, therefore, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.

Because Teafatiller challenges the legality of his conviction, rather than the execution of his sentence, his pleading is properly construed as a 28 U.S.C. § 2255 motion, rather than as a 28 U.S.C. § 2241 petition. See United States v. Gabor, 905 F.2d 76, 77-78 (5th Cir. 1990). A § 2255 motion must be filed in the district where the prisoner was sentenced.

O R D E R
No. 93-5306

-2-

Solsona v. Warden, F.C.I., 821 F.2d 1129, 1132 (5th Cir. 1987).
Teafatiller was sentenced in the Northern District of Oklahoma
but filed his pleading in the Eastern District of Texas. Thus,
the district court had no jurisdiction to entertain this action
and the court properly denied Teafatiller's § 2255 motion.