

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5628
Conference Calendar

ROGER DALE BROOKS,

Petitioner-Appellant,

versus

U.S. DEPARTMENT OF JUSTICE,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:93-CV-91
- - - - -

(May 17, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

BY THE COURT:

IT IS ORDERED that Roger Dale Brooks' motion for leave to appeal in forma pauperis 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.

Brooks challenges the legality of his conviction rather than the execution of his sentence. A petition under 28 U.S.C. § 2241 attacking custody resulting from a federally imposed sentence may be entertained only if the petitioner establishes that the remedy provided for under 28 U.S.C. § 2255 is "inadequate or ineffective to test the legality of his detention." Cox v. Warden, Federal Detention Center, 911 F.2d 1111, 1113 (5th Cir. 1990) (citation omitted).

O R D E R
No. 93-5628

-2-

Brooks has not alleged, nor shown, that the remedy provided for under § 2255 is "'inadequate or ineffective.'" Furthermore, a § 2255 motion must be filed in the district where the prisoner was sentenced. See Solsona v. Warden, F.C.I., 821 F.2d 1129, 1131 (5th Cir. 1987). Brooks was sentenced in the Northern District of Texas but filed his § 2241 petition, which is more properly a § 2255 motion, in the Eastern District of Texas. Thus, the district court had no jurisdiction to entertain this action. See United States v. Gabor, 905 F.2d 76, 77-78 (5th Cir. 1990).

APPEAL DISMISSED.