

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40021
Conference Calendar

DANIEL J. SHEEHAN,

Petitioner-Appellant,

versus

MARISELA SALDANA, Judge,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-95-CV-619
- - - - -

December 11, 1996

Before WIENER, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Daniel J. Sheehan appeals the district court's dismissal of his habeas petition for lack of subject-matter jurisdiction. Because Sheehan was not "in custody" for the challenged offense at the time he filed his habeas petition, the district court did not have subject-matter jurisdiction to entertain the action. See Maleng v. Cook, 490 U.S. 488, 490-91 (1989).

Sheehan's appeal is without arguable merit and thus frivolous. See 5th Cir. R. 42.2.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

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APPEAL DISMISSED.