

April 17, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41207
Conference Calendar

JOSE VILLA-YANEZ,

Petitioner-Appellant,

versus

STEVE MORRIS, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:05-CV-340

Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Jose Villa-Yanez (Villa), federal prisoner # 05551-085, has appealed the dismissal of his 28 U.S.C. § 2241 petition challenging his 1997 conviction of conspiracy to possess with intent to distribute cocaine and 240-month term of imprisonment. Villa contends that his sentence was unconstitutional in light of Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 543 U.S. 220 (2005), and that he should be permitted to assert his Booker claim in a § 2241 proceeding under the savings

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

clause of 28 U.S.C. § 2255. Because Blakely and Booker are not retroactively applicable to cases on collateral review, Villa cannot show that he should be permitted to assert his claims under the savings clause of § 2255. See Padilla v. United States, 416 F.3d 424, 426-27 (5th Cir. 2005); Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001).

The district court's judgment is AFFIRMED.