

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-21143
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CLIPBERTO VALENCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CV-3081
USDC No. H-91-CR-39-04

May 29, 2001

Before DAVIS, JONES, and DeMOSS, Circuit Judges.

PER CURIAM:*

Clipberto Valencia, federal prisoner #59055-079, appeals from the denial of his 28 U.S.C. § 2241 petition, a petition that was construed as a motion for relief pursuant to 28 U.S.C. § 2255. We granted Valencia a certificate of appealability (COA) on the issue whether the expiration of the limitations period to seek relief pursuant to § 2255 may render § 2255 ineffective as an avenue of relief on claims raise pursuant to *Bailey v. United*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States, 516 U.S. 137 (1995), allowing Valencia to seek relief pursuant to § 2241.

Bailey was decided in 1995, before the limitations period closed for Valencia to file a § 2255 motion. Valencia's *Bailey* claim therefore was not foreclosed by existing law during the period when he could have filed a timely motion. The savings clause of § 2255 therefore did not apply to Valencia's case, allowing him to proceed under § 2241. *Reyes-Requena v. United States*, ___ F.3d ___, No. 99-41254 (5th Cir. Feb. 28, 2001), 2001 WL 197931 at *10.

AFFIRMED.