

August 16, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-11410
Conference Calendar

TERRY LEE OWENS,

Petitioner-Appellant,

versus

COLE JETER, Warden, Federal Medical Center Fort Worth,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:04-CV-727

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Terry Lee Owens, federal prisoner # 29251-077, appeals the district court's summary dismissal of his 28 U.S.C. § 2241 petition, challenging his sentence for distributing 124.9 grams of cocaine base. He argues that under Blakely v. Washington, 124 S. Ct. 2531 (2004), the district court erroneously based his sentence on 2.86 kilograms of cocaine base and his role in the offense. He argues that he qualifies for the savings clause of 28 U.S.C. § 2255 because he is actually innocent of the non-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

existent offenses of (1) distributing 2.86 kilograms of cocaine base and (2) the two-point enhancement for his role as a manager or supervisor. He asserts that it would be inadequate and ineffective for him to seek permission from this court via a successive 28 U.S.C. § 2255 motion. See Wesson v. United States Penitentiary, 305 F.3d 343, 347-48 (5th Cir. 2002).

Owens's argument is unavailing in light of this court's decision in Padilla v. United States, ___ F.3d ___, 2005 WL 1595291, *2 (5th Cir. July 8, 2005) (No. 04-50567).

AFFIRMED.