

August 16, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10180
Conference Calendar

WILLIE GEORGE MCDONALD,

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-828

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Willie George McDonald, federal prisoner # 19369-077, appeals the dismissal of his 28 U.S.C. § 2241 petition challenging the 480-month sentence he received in December 1990 for distributing heroin, in violation of 21 U.S.C. § 841(a) and (b). McDonald asserted that the sentence imposed exceeded the statutory maximum sentence for the offense to which he pleaded guilty based on judicially determined facts, in violation of his Fifth and Sixth Amendment rights under Blakely v. Washington, 124

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

S. Ct. 2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005).

The district court determined that it lacked jurisdiction because the petition was in fact a successive 28 U.S.C. § 2255 motion filed without prior authorization from this court. As the district court determined, because McDonald's petition challenges errors that occurred at sentencing, it should have been brought in a 28 U.S.C. § 2255 motion. See Padilla v. United States, ___ F.3d ___, No. 04-50567, 2005 WL 1595291, *1 (5th Cir. July 8, 2005). McDonald's argument that he is entitled to proceed under 28 U.S.C. § 2241 based on the savings clause of 28 U.S.C. § 2255 because relief under that section is "inadequate or ineffective" is unavailing. Id. at *2 (holding that a claim under Booker does not fit within the savings clause of 28 U.S.C. § 2255).

The district court's judgment is AFFIRMED.