

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10370
Conference Calendar

WILLIE FRANK KING,

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-600

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Willie Frank King, federal prisoner # 29510-077, seeks leave to proceed in forma pauperis (IFP) to appeal the dismissal of his 28 U.S.C. § 2241 petition challenging the 328-month sentence he received for various drug-trafficking offenses. The district court denied IFP, certifying that the appeal was not taken in good faith. By moving for leave to proceed IFP, King is challenging the district court's certification. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); FED. R. APP. P.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

24(a)(5). However, King has not demonstrated any nonfrivolous ground for appeal.

King argues that his sentence is invalid in light of Blakely v. Washington, 124 S. Ct. 2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005). As the district court determined, because King's petition challenges errors that occurred at sentencing, it should not be brought as a 28 U.S.C. § 2241 petition. See Padilla v. United States, 416 F.3d 424, 426-27 (5th Cir. 2005). King'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 427 (holding that a claim under Booker does not fit within the savings clause of 28 U.S.C. § 2255).

The IFP motion is DENIED, and the appeal is DISMISSED as frivolous. See Baugh, 117 F.3d at 202; 5TH CIR. R. 42.2.