

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40187
Conference Calendar

JOSEPH LABOSCO,

Petitioner-Appellant,

versus

MICHAEL PURDY, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-00-CV-4

August 24, 2000

Before KING, Chief Judge, and POLITZ and WIENER, Circuit Judges.

PER CURIAM:*

Joseph LaBosco, federal prisoner #29463-053, appeals the district court's denial, as not taken in good faith, of his motion to proceed in forma pauperis on appeal. LaBosco argues that, since he cannot file a successive § 2255 motion, his only available remedy to challenge his illegal incarceration is a § 2241 petition. LaBosco contends that a § 2255 motion is inadequate or ineffective because any attempt to file such a motion would be dismissed as successive.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

LaBosco's argument is foreclosed by Fifth Circuit precedent. See Tolliver v. Dobre, 211 F.3d 876, 877 (5th Cir. May 3, 2000) (a prior unsuccessful § 2255 motion, or the inability to meet the Anti-terrorism and Effective Death Penalty Act of 1996's "second or successive" requirement does not make § 2255 inadequate or ineffective because the petitioner is simply attempting to circumvent the limitations on filing successive § 2255 motions). Accordingly, his appeal is frivolous. His motion for IFP is denied, and his appeal dismissed. See 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.