

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40990
Summary Calendar

EDWARD J. BACKSTROM,

Petitioner-Appellant,

versus

JOHNOTHAN DOBRE, Warden,
Federal Correctional Institution,
Beaumont Medium,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:00-CV-327
- - - - -

May 18, 2001

Before EMILIO M. GARZA, STEWART and PARKER, Circuit Judges.

PER CURIAM:*

Edward J. Backstrom, federal prisoner # 07243-029, appeals the district court's dismissal of his § 28 U.S.C. 2241 petition. Because Backstrom's petition challenged his sentence, the district court did not err in construing his petition as a 28 U.S.C. § 2255 motion. See Tolliver v. Dobre, 211 F.3d 876, 877-78 (5th Cir. 2000). Backstrom has not shown that "the remedy provided for under [28 U.S.C.] § 2255 is inadequate or

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

ineffective to test the legality of his detention." Cox v. Warden, Federal Detention Ctr., 911 F.2d 1111, 1113 (5th Cir. 1990)(internal quotations and citation omitted). He has not shown that he will raise a claim "(i) that is based on a retroactively applicable Supreme Court decision which establishes that petitioner may have been convicted of a nonexistent offense and (ii) that was foreclosed by circuit law at the time when the claim should have been raised in the petitioner's trial, appeal, or first § 2255 motion." See Reyes-Requena v. United States, ___ F.3d ___ (5th Cir. Feb. 28, 2001, No. 99-41254) 2001 WL 197931 at *10. A prior unsuccessful 28 U.S.C. § 2255 motion or the inability to meet the requirements for filing a successive 28 U.S.C. § 2255 motion does not make 28 U.S.C. § 2255 inadequate or ineffective. See Tolliver, 211 F.3d at 878. Because Backstrom was convicted and sentenced by the district court for the Northern District of Iowa, the district court for the Eastern District of Texas lacked jurisdiction to consider Backstrom's 28 U.S.C. § 2255 motion. See United States v. Weathersby, 958 F.2d 65, 66 (5th Cir. 1992).

AFFIRMED.