

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30494
Summary Calendar

BOBBY BOSUN SMITH,

Petitioner-Appellant,

versus

JOHN ASHCROFT, U.S. Attorney General;
KEVIN D. ROONEY, ACTING COMMISSIONER,
IMMIGRATION AND NATURALIZATION SERVICE;
ANDREA QUARANTILLO, District Director,
Immigration and Naturalization Service;
CHRISTINE G. DAVIS, District Director,
Immigration and Naturalization Service;
IMMIGRATION AND NATURALIZATION SERVICE,

Respondents-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 01-CV-444

October 31, 2001

Before DAVIS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Bobby Bosun Smith, federal prisoner # 18748-083, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition as an abuse of the writ. Smith argues that the district court abused its discretion in dismissing his habeas petition as the district court did not address the merits of his prior habeas petitions.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Contrary to Smith's argument, the district court addressed the merits of one of Smith's prior habeas petitions in which he raised exactly the same issues as those raised in this petition. See Smith v. Reno, No. 2:99-CV-2157 (W.D. La. May 22, 2000). Smith's failure to raise a new ground for habeas relief in this habeas petition constitutes an abuse of the writ. See United States v. Tubwell, 37 F.3d 175, 178 (5th Cir. 1994).

Smith argues that the issue whether his habeas petition is an abuse of the writ is moot in view of the Supreme Court's decision in INS v. St. Cyr, 121 S. Ct. 2271 (2001). In St. Cyr, the Supreme Court held that habeas jurisdiction under 28 U.S.C. § 2241 was not repealed by the Antiterrorism and Effective Death Penalty Act and Illegal Immigration Reform and Immigrant Responsibility Act. Id. at 2286. The Supreme Court's decision in St. Cyr did not change the law concerning abuse of the writ and is inapplicable to the instant case. Smith's motion to subpoena records is DENIED.

AFFIRMED; MOTION TO SUBPOENA RECORDS DENIED.