

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10825
Conference Calendar

JOSE GARCIA,

Petitioner-Appellant,

versus

L. E. FLEMING, Warden, Federal Medical Center - Fort Worth,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:02-CV-505-A

February 19, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Garcia, federal prisoner # 35533-054, appeals from the district court's dismissal of his petition for habeas corpus relief under 28 U.S.C. § 2241. The district court construed Garcia's petition, which challenged the validity of his 1995 drug conspiracy and importation convictions, as a successive motion under 28 U.S.C. § 2255 and dismissed the petition because Garcia had not obtained authorization to file such a motion.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Garcia has not challenged in this court the district court's reasons for dismissing his complaint. Accordingly, it is as if Garcia had not appealed the judgment. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Garcia's appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

APPEAL DISMISSED AS FRIVOLOUS.