

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-60245
Summary Calendar

MIGUEL CRUZ-FERNANDEZ,

Petitioner-Appellant,

versus

KHURSHID Z. YUSUFF,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:01-CV-79-BrS

November 7, 2002

Before JONES, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

Miguel Cruz-Fernandez (Cruz), federal prisoner # 25041-004, has filed a 28 U.S.C. § 2241 petition challenging his 1992 conviction for possession of cocaine with intent to distribute. He asserts that because the jury was not required to find the drug type, quality, or quantity beyond a reasonable doubt and the drug quality and quantity were not alleged in the indictment, his conviction and sentence are invalid under Apprendi v. New Jersey,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

530 U.S. 466 (2000). Apprendi does not apply retroactively to cases on collateral review, and an Apprendi violation does not establish that a petitioner was convicted of a nonexistent offense. Wesson v. U.S. Penitentiary Beaumont, Tex., ___ F.3d ___ (5th Cir. Sept. 5, 2002, No. 01-41000), 2002 WL 31006173 at *3-*4; Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001). Cruz has not established that he is entitled to present his claims under 28 U.S.C. § 2241, and the district court's judgment is AFFIRMED.