

August 6, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10360
Summary Calendar

JOSE GARCIA,

Petitioner-Appellant,

versus

L. E. FLEMING, Warden, FMC-Fort Worth,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:03-CV-00173-Y

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

PER CURIAM:¹

Jose Garcia, federal prisoner No. 35533-054, appeals the dismissal of his 28 U.S.C. § 2241 petition. In 1995, Garcia was convicted of conspiracy and controlled substance offenses in the United States District Court for the Southern District of New York, and he is currently incarcerated in the Northern District of Texas. Garcia has unsuccessfully challenged his sentence under 28 U.S.C. § 2255.

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 argues that he is actually innocent of conspiracy to import cocaine because the jury acquitted all of his codefendants of that charge. Because Garcia's argument alleges errors at his trial, it must be construed as a § 2255 motion unless he establishes that his claims fall under the savings clause of § 2255. Pack v. Yusuff, 218 F.3d 448, 452 (5th Cir. 2000). Garcia has not attempted to make that showing. See Wesson v. U.S. Penitentiary Beaumont, TX, 305 F.3d 343, 347 (5th Cir. 2002), cert. denied, 123 S. Ct. 1374 (2003). As claims arising under § 2255 must be heard in the sentencing court, the District Court for the Northern District of Texas lacked jurisdiction to construe Garcia's pleadings as a § 2255 motion. See § 2255.

AFFIRMED.