

October 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10622  
Summary Calendar

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CHARLES ALLEN HOUSE,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:03-CV-00320-A  
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Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Charles Allen House, federal prisoner #06081-112, appeals the dismissal of his 28 U.S.C. § 2241 petition, which challenged his conviction for conspiracy to possess with intent to distribute methamphetamine. House argues that he is actually innocent of the offense of conviction because his indictment did not cite 21 U.S.C. § 846 and further, that the district court did not determine whether he properly filed his petition in the Northern District of Texas pursuant to 28 U.S.C. §§ 1651(a) and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2241. The district court found that House's 28 U.S.C. § 2241 petition was improperly filed and was not salvaged by 28 U.S.C. § 2255's "savings clause."

House was not entitled to pursue habeas relief under 28 U.S.C. § 1651 because he remains in custody and has not completed his sentence. See United States v. Dyer, 136 F.3d 417, 422 (5th Cir. 1998). Moreover, because House is not incarcerated in Texas, the district court did not have jurisdiction to entertain his petition pursuant to 28 U.S.C. § 2241. See Lee v. Wetzel, 244 F.3d 370, 373-75 (5th Cir. 2001). Accordingly, the judgment of the district court is VACATED and the case is REMANDED with instructions to DISMISS House's 28 U.S.C. § 2241 petition without prejudice for lack of jurisdiction.