

June 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40166
Conference Calendar

TONY FUENTE DURAN,

Petitioner-Appellant,

versus

JOHN M. TOMBONE, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:02-CV-762

Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Tony Fuente Duran, federal prisoner # 66501-079, appeals the district court's dismissal with prejudice of his 28 U.S.C. § 2241 petition. Duran argues that the district court erred in not addressing his actual-innocence claim on the merits. Duran has failed to identify a retroactively applicable Supreme Court decision which establishes that he may have been convicted of a nonexistent offense. His claim, therefore, does not satisfy the savings clause of 28 U.S.C. § 2255, and he is not entitled to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

utilize 28 U.S.C. § 2241. See Reyes-Requena v. United States, 243 F.3d 893 (5th Cir. 2001). This appeal is without arguable merit and, therefore, it is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

APPEAL DISMISSED.