

August 20, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40349
Conference Calendar

KEITH O. COBB,

Petitioner-Appellant,

versus

MARVIN MORRISON, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:02-CV-835

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Keith O. Cobb, a federal prisoner (# 60806-080), appeals the district court's dismissal of his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. In 1995, the district court for the Western District of Texas imposed upon Cobb concurrent prison terms of 400 months and 60 months for his jury-trial convictions of conspiracy to possess cocaine with intent to distribute and conspiracy to launder money.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court did not err in dismissing the petition. Cobb's claim that his sentence is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000), does not satisfy the test for filing a 28 U.S.C. § 2241 petition under 28 U.S.C. § 2255's "savings clause." See Wesson v. U.S. Penitentiary, Beaumont, TX, 305 F.3d 343, 347-48 (5th Cir. 2002), cert. denied, 123 S. Ct. 1374 (2003); Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001).

Cobb's appeal is without arguable merit and is thus 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.