

August 20, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40423  
Conference Calendar

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BERNARD VINCENT MONTGOMERY,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:03-CV-61  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Bernard Vincent Montgomery, federal prisoner # 53653-146, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition challenging the validity of his convictions for methamphetamine manufacture, importation, and distribution. He asserts that his sentence is invalid in light of Jones v. United States, 526 U.S. 227 (1999). Because Montgomery is challenging the method by which his sentence was calculated, rather than the execution of his sentence, the district court correctly construed

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

his petition as a 28 U.S.C. § 2255 motion. See Jeffers v. Chandler, 253 F.3d 827, 830 (5th Cir.), cert. denied, 534 U.S. 1001 (2001). Montgomery has not established that his Jones claim satisfies the test for filing a 28 U.S.C. § 2241 petition under the "savings clause" of 28 U.S.C. § 2255. See Jones, 526 U.S. at 251 n.11; see also Wesson v. U.S. Penitentiary Beaumont, Tex., 305 F.3d 343, 347-48 (5th Cir. 2002), cert. denied, 123 S. Ct. 1374 (2003); In re Tatum, 233 F.3d 857, 859 (5th Cir. 2000). The judgment of the district court is AFFIRMED.