

December 10, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40695
Conference Calendar

RUBEN HINOJOSA,

Petitioner-Appellant,

versus

MARVIN MORRISON, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:03-CV-243

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Ruben Hinojosa, federal prisoner # 64378-079, appeals the denial of his 28 U.S.C. § 2241 habeas petition challenging the sentence imposed following his guilty plea conviction for conspiracy to possess with intent to distribute marijuana. Hinojosa was sentenced to a term of imprisonment of 151 months, to be followed by a five-year term of supervised release.

Hinojosa argues that he is entitled to seek relief under 28 U.S.C. § 2241 based on the savings clause of 28 U.S.C. § 2255

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

because he was foreclosed from raising an Apprendi** claim at the time of his guilty plea. He argues that 28 U.S.C. § 2255 does not provide him with an adequate remedy and that the failure to address his claims would result in a miscarriage of justice.

Hinojosa's Apprendi claims do not satisfy the test for filing a 28 U.S.C. § 2241 petition under 28 U.S.C.

§ 2255's "savings clause." Wesson v. U.S. Penitentiary, Beaumont, TX, 305 F.3d 343, 347 (5th Cir. 2002); Reyes -Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001).

Accordingly, the district court's denial of Hinojosa's 28 U.S.C. § 2241 habeas petition is AFFIRMED.

** Apprendi v. New Jersey, 530 U.S. 466 (2000).