

FILED

August 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40296
Conference Calendar

SAMUEL DEWITT-MCCOTTER,

Petitioner-Appellant,

versus

UNITED STATES SENTENCING COMMISSION,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:04-CV-12-MAC-ESH

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Samuel DeWitt-McCotter, federal prisoner # 12687-056, was convicted of conspiring to distribute cocaine and using a firearm during the commission of a drug trafficking offense. He appeals the district court's dismissal of his 28 U.S.C. § 2241 petition challenging this conviction. DeWitt-McCotter argues that the district court erred by holding that his 28 U.S.C. § 2241 petition was subject to dismissal because it did not warrant application of the "savings clause" set forth in 28 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 2255. He contends that his sentence is not authorized because it violates the Ex Post Facto Clause and, in light of Bailey v. United States, 516 U.S. 137 (1995), he was convicted of a nonexistent offense. The district court found that DeWitt-McCotter had raised a Bailey claim in a prior motion before the sentencing court.

Because DeWitt-McCotter's claims fail to meet the requisite standard, the "savings clause" is not applicable to his 28 U.S.C. § 2241 petition. See Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001). Accordingly, the district court's judgment is AFFIRMED.