

December 12, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-10887  
Conference Calendar

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DERRICK MCNAIRY,

Petitioner-Appellant,

versus

DAN JOSLIN, WARDEN, FEDERAL CORRECTIONAL INSTITUTION SEAGOVILLE,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:05-CV-1166  
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Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:\*

Derrick McNairy, federal prisoner # 33456-077, was convicted of possession of cocaine base with intent to distribute and sentenced to serve 15 years in prison. He filed a 28 U.S.C. § 2241 habeas corpus petition to challenge his sentence, and he now appeals the district court's dismissal of his § 2241 petition. He argues that he should be permitted to pursue § 2241 relief in accordance with the savings clause of 28 U.S.C. § 2255 because the remedy under § 2255 is inadequate and because he is actually innocent of his sentence. He relies on United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Booker, 543 U.S. 220 (2005), in support of his substantive sentencing claims.

McNairy has not shown that the district court erred in determining that his purported § 2241 petition was best construed as an unauthorized successive § 2255 motion. See Tolliver v. Dobre, 211 F.3d 876, 877 (5th Cir. 2000); Cox v. Warden, Fed. Det. Ctr., 911 F.2d 1111, 1113 (5th Cir. 1990). McNairy likewise has not shown that he should be permitted to proceed under the savings clause of § 2255. See Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001); Pack v. Yusuff, 218 F.3d 448, 452-53 (5th Cir. 2000). The judgment of the district court is AFFIRMED.