

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10597
Summary Calendar

GARRY DAVID GALLARDO,

Petitioner-Appellant,

versus

GEORGE E. KILLINGER, Warden,
FCI Ft. Worth, TX.,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:95-CV-328-A
- - - - -

November 26, 1996

Before GARWOOD, JOLLY, and DENNIS, Circuit Judges.

PER CURIAM:*

Garry Gallardo, # 41571-080, appeals the dismissal of his petition for habeas corpus, which he filed pursuant to 28 U.S.C. § 2241. Gallardo argues that the district court erred by dismissing his petition because the indictment under which he was convicted was defective and thereby divested the sentencing court of jurisdiction. Gallardo also argues that his § 2241 petition filed in the Northern District of Texas was the appropriate

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

vehicle to present his requested remedy because the "convicting court" erroneously denied him permission to file a § 2255 motion in the Western District of Texas. We have reviewed the record and Gallardo's briefs and find no reversible error. See Broussard v. Lippman, 643 F.2d 1131, 1134 (5th Cir.), cert. denied, 452 U.S. 920 (1981). Because the appeal is without arguable merit, it is frivolous and, therefore, is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.