

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40083
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODOLFO ROMERO-SOTO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-95-CV-126
- - - - -

April 18, 1996

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Rodolfo Romero-Soto appeals from the district court's dismissal of his 28 U.S.C. § 2255 motion which the district court construed as a 28 U.S.C. § 2241 petition. Romero-Soto's appellate brief is construed as a motion to proceed in forma pauperis (IFP) on appeal. Because Romero-Soto was challenging the execution of his sentence, his motion was properly construed as a 28 U.S.C. § 2241 petition. See United States v. Gabor, 905 F.2d 76, 77 (5th Cir. 1990).

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Romero-Soto is confined in Big Spring, Texas, which is located in Howard County, Texas. Thus, jurisdiction is proper in the Northern District of Texas. See 28 U.S.C. § 124(a)(3). The Southern District of Texas lacked jurisdiction to afford Romero-Soto the relief he requested. Gabor, 905 F.2d at 78. Because the appeal raises no legal issue of arguable merit, it is frivolous. See Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986). Therefore, Romero-Soto's motion to proceed IFP on appeal is DENIED and the appeal is DISMISSED. See 5th Cir. R. 42.2.