

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40787
Summary Calendar

W. HAROLD SELLERS,

Petitioner-Appellant,

versus

E.V. CHANDLER, Warden, Custodian of Mr. Sellers,
United States Bureau of Prisons, Federal Prison
Camp, Beaumont, Texas; RONALD G. THOMPSON, South
Central Regional Administrator, United States
Bureau of Prisons,

Respondents-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:01-CV-177

July 30, 2002

Before JOLLY, HIGGINBOTHAM and PARKER, Circuit Judges.

PER CURIAM:*

W. Harold Sellers appeals from the denial of his 28 U.S.C.
§ 2241 petition. He argues that the district court erred in
determining that his challenge to the indictment in light of
Neder v. United States, 527 U.S. 1, 20 (1999), did not meet the

* 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that this opinion should not be published and is not precedent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.

criteria for bringing a claim pursuant to the "savings clause" of 28 U.S.C. § 2255.

"[T]he savings clause of § 2255 applies to a claim (i) that is based on a retroactively applicable Supreme Court decision which established that the petitioner may have been convicted of a nonexistent offense and (ii) that was foreclosed by circuit law at the time when the claim should have been raised in the petitioner's trial, appeal, or first § 2255 motion."

Reyes-Reguena v. United States, 243 F.3d 893, 904 (5th Cir. 2001).

We pretermitted the issue whether Neder is retroactively applicable to cases on collateral review, because Sellers cannot show that his challenge to the indictment was foreclosed at the time of his first 28 U.S.C. § 2255 motion. As this court previously noted, Sellers had ample opportunity to raise this claim prior to the denial of that motion. He therefore has not shown that the district court erred in dismissing his petition, and the judgment of the district court is AFFIRMED.