

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10632
Conference Calendar

JOSE MANUEL PORRAS,

Petitioner-Appellant,

versus

RALPH PAYNE, Warden, Big Spring,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:01-CV-60-C

December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Manuel Porras, federal prisoner # 80412-080, has filed a 28 U.S.C. § 2241 petition challenging his conviction for conspiring to possess marijuana with intent to distribute. He asserts that his conviction and sentence are invalid under Apprendi v. New Jersey, 530 U.S. 466 (2000). Apprendi does not apply retroactively to cases on collateral review, and an Apprendi violation does not satisfy the test for filing a 28 U.S.C. § 2241 petition under the "savings clause" of 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. Wesson v. U.S. Penitentiary Beaumont, Tex., 305 F.3d 343, 347-48 (5th Cir. 2002).

Porras also contends that not allowing him to raise his claims under 28 U.S.C. § 2241 will constitute a violation of the Suspension Clause of the Constitution. The "savings clause" of 28 U.S.C. § 2255 does not violate the Suspension Clause. See Reyes-Requena v. United States, 243 F.3d 893, 901 n.19 (5th Cir. 2001). As Porras has not established that he is entitled to present his claims under 28 U.S.C. § 2241, the district court's judgment is AFFIRMED.

The respondent has moved to dismiss the appeal, for summary affirmance, to require Porras to obtain a certificate of appealability, and for an extension of time to file a brief. These motions are DENIED.

AFFIRMED; MOTIONS DENIED.