

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10690
Conference Calendar

DARRYL WARREN,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:02-CV-196
- - - - -

February 19, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Darryl Warren, federal prisoner # 24557-044, appeals the district court's dismissal with prejudice of his 28 U.S.C. § 2241 petition. Warren's petition, which asserts claims based on Apprendi v. New Jersey, 530 U.S. 466 (2000), attacks his Missouri district court conviction on one count of conspiring to distribute, and to possess with intent to distribute, cocaine, marijuana, and heroin.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Warren has failed to address the district court's determination that his claims are subject to the rules of 28 U.S.C. § 2255 and that Warren has not been granted leave to file a second or successive 28 U.S.C. § 2255 motion. Warren has also failed to address the district court's determination that he does not satisfy the savings clause of 28 U.S.C. § 2255 and thus is not entitled to use 28 U.S.C. § 2241. See Reyes-Requena v. United States, 243 F.3d 893 (5th Cir. 2001). Warren has therefore waived argument on these issues. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993).

This appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). It is therefore dismissed. 5TH CIR. R. 42.2.

APPEAL DISMISSED.