

April 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-11130
Conference Calendar

ADOLFO MORENO-RIOS,

Petitioner-Appellant,

versus

L.E. FLEMING, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:02-CV-793-A

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Adolfo Moreno-Rios, federal prisoner # 71268-079, filed a 28 U.S.C. § 2241 petition in the district court. In his petition, Moreno-Rios attacked his underlying conviction for drug-related offenses on the grounds of double jeopardy, actual innocence, mental incompetency, and ineffective assistance of counsel.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Moreno-Rios 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 Moreno-Rios has not been granted leave to file a second or successive 28 U.S.C. § 2255 motion. Moreno-Rios 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, 220 (5th Cir. 1983). It is therefore dismissed. 5TH CIR. R. 42.2.

APPEAL DISMISSED.