

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20557
Conference Calendar

WARREN PIERRE CANADY,

Petitioner-Appellant,

versus

JANIE COCKRELL, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CV-1286

October 29, 2002
Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Warren Pierre Canady, Texas prisoner # 723784, appeals the district court's denial of his 28 U.S.C. § 2241 petition. Because the claims were presented under 28 U.S.C. § 2241, a certificate of appealability (COA) is not necessary. See Ojo v. INS, 106 F.3d 680, 681-82 (5th Cir. 1997). Canady's motion for leave to file a supplemental brief is GRANTED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Canady asserts that he should be allowed to present claims arising under Apprendi v. New Jersey, 530 U.S. 466 (2000), in the instant habeas petition pursuant to the savings clause of 28 U.S.C. § 2255. Because Canady is not a federal prisoner, 28 U.S.C. § 2255 is inapplicable to him.

Canady's challenge is to the length of his sentence, rather than a challenge to the manner in which his sentence was executed. Therefore, the claims are not properly raised under 28 U.S.C. § 2241. See United States v. Tubwell, 37 F.3d 175, 177 (5th Cir. 1994). The district court did not err in concluding that Canady had failed to present a claim upon which relief could be granted. See Moody v. Johnson, 139 F.3d 477, 480 (5th Cir. 1998). Consequently, the judgment of the district court is AFFIRMED.

AFFIRMED; COA DENIED AS UNNECESSARY; MOTION TO SUPPLEMENT GRANTED.