

April 3, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-21070
Summary Calendar

UHRICO CADENA,

Petitioner-Appellant,

versus

NEIL ADLER, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CV-552

Before JOLLY, JONES and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Uhrico Cadena, federal prisoner # 57712-080, appeals the district court's dismissal with prejudice of his 28 U.S.C. § 2241 petition. Cadena argues that his claims fall under the savings clause of 28 U.S.C. § 2255 because that section is inadequate or ineffective to test the legality of his imprisonment. He argues that his sentence violates Apprendi v. New Jersey, 530 U.S. 466 (2000), because no drug amount was proven by the jury and 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

jury did not conclude that he was in a leadership position or carried a firearm.

Cadena's inability to meet the requirements for filing a successive motion under 28 U.S.C. § 2255 does not make the remedy under that section inadequate and ineffective. Pack v. Yusuff, 218 F.3d 448, 453 (5th Cir. 2000). Further, Apprendi does not apply retroactively to cases on collateral review, and an Apprendi claim does not satisfy the test for filing a 28 U.S.C. § 2241 petition under the savings clause of 28 U.S.C. § 2255. See Wesson v. U.S. Penitentiary, Beaumont, Tx., 305 F.3d 343, 347-48 (5th Cir. 2002), petition for cert. filed, (Nov. 29, 2002) (No. 02-8768). Accordingly, the judgment of the district court is AFFIRMED. Cadena's motions for appointment of counsel and for bail pending his appeal are DENIED.