

April 3, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-31120
Summary Calendar

BILLY GENE HARRIS,

Petitioner-Appellant,

versus

JOSEPH HARO,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 02-CV-1214

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Billy Gene Harris, federal prisoner # 06244-062, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition. Because Harris' 28 U.S.C. § 2241 petition challenged the legality of his conviction, Harris had to show that 28 U.S.C. § 2255 provided him with an inadequate or ineffective remedy. Pack v. Yusuff, 218 F.3d 448, 452 (5th Cir. 2000). "[T]he savings clause of § 2255 applies to a claim (i) that is based on a retroactively applicable Supreme Court decision which established that 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

petitioner may have been convicted of a nonexistent offense and (ii) that was foreclosed by circuit law at the time when the claim should have been raised in the petitioner's trial, appeal, or first § 2255 motion." Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001).

Harris argues that his indictment was defective because he was charged under the wrong statute as a native American, and that the district court lacked jurisdiction over his case because the charged offenses occurred on a fee simple estate rather than on an Osage Indian allotment. Because Harris fails to identify any authority demonstrating that he was convicted of a nonexistent offense, his jurisdictional challenges to his conviction fail to satisfy the first prong of the Reyes-Requena test. The district court's dismissal of Harris' 28 U.S.C. § 2241 petition is therefore AFFIRMED.