

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40301  
Conference Calendar

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MARCO ANTONIO ZAPATA, III,

Petitioner-Appellant,

versus

ERNEST CHANDLER, Warden,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:01-CV-125  
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December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Marco Antonio Zapata, III, federal prisoner # 24879-077, was convicted of conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846 and sentenced to 360 months in prison. He appeals the district court's dismissal of his 28 U.S.C. § 2241 petition, arguing that his sentence should be vacated under Apprendi v. New Jersey, 530 U.S. 466 (2000) and that his Apprendi claim satisfies the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

requirements for filing a 28 U.S.C. § 2241 petition under the "savings clause" of 28 U.S.C. § 2255.

This court has recently held that Apprendi does not apply retroactively to cases on collateral review and that an Apprendi claim does not satisfy the requirements for filing a 28 U.S.C. § 2241 petition under the savings clause. See Wesson v. U.S. Penitentiary, Beaumont, TX, 305 F.3d 343, 347-48 (5th Cir. 2002).

Accordingly, the district court's dismissal of Zapata's petition is AFFIRMED.