

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40407  
Conference Calendar

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CARLOS A. DIAZ,

Petitioner-Appellant,

versus

JONATHON DOBRE,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:02-CV-45  
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October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Carlos A. Diaz, federal prisoner #03767-078, appeals from the dismissal with prejudice of his petition seeking relief under 28 U.S.C. § 2241. The district court held, because Diaz was challenging errors that were alleged to have occurred during his criminal proceedings, his claims must be raised in a motion filed pursuant to 28 U.S.C. § 2255 and that Diaz had failed to show that the savings clause of 28 U.S.C. § 2255 was applicable. Diaz

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

has failed to show on appeal that he is entitled to application of the savings clause. Moreover, this court has recently held that Apprendi v. New Jersey, 530 U.S. 466 (2000), does not apply retroactively to cases on collateral review and that an Apprendi claim does not satisfy 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).

Finally, any error committed by the district court in failing to provide Diaz with notice that it was considering dismissal of his petition and an opportunity to respond was harmless under these circumstances. See United States v. Cullum, 47 F.3d 763, 765 (5th Cir. 1995).

Accordingly, the district court's judgment is AFFIRMED.