

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40668
Conference Calendar

RAUL DE LA TORRE,

Petitioner-Appellant,

versus

JOHN TOMBONE, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:02-CV-84

October 29, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Raul De La Torre, federal prisoner # 30738-077, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition challenging his 300-month sentence for conspiracy to possess over 1,000 kilograms of marijuana with intent to distribute and money laundering. He asserts that his guilty plea was involuntary and that his counsel rendered ineffective assistance by allowing De La Torre to plead guilty without understanding the consequences

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of the plea, by misrepresenting the consequences of the plea, and by not advising De La Torre of his appellate rights.

In order to raise this challenge to the validity of his conviction under 28 U.S.C. § 2241, De La Torre must show that 28 U.S.C. § 2255 provides an inadequate or ineffective remedy. Pack v. Yusuff, 218 F.3d 448, 452 (5th Cir. 2000). He has not shown that his claims are based on a retroactively applicable Supreme Court decision establishing that he may have been convicted of a nonexistent offense or that his claims were foreclosed by circuit law at the time that he filed his 28 U.S.C. § 2255 motion. See Henderson v. Haro, 282 F.3d 862, 863 (5th Cir. 2002). Consequently, the district court's dismissal of De La Torre's 28 U.S.C. § 2241 petition is AFFIRMED.

De La Torre has moved for appointment of counsel on appeal. This motion is DENIED. See Schwander v. Blackburn, 750 F.2d 494, 502 (5th Cir. 1985).

AFFIRMED; MOTION DENIED.