

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40903
Summary Calendar

ALFREDO CASTRO-ALVAREZ,

Petitioner-Appellant,

versus

J. DOBRE, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas

(USDC No. 1:02-CV-343)

December 4, 2002

Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Alfredo Castro-Alvarez ("Castro"), federal prisoner # 00612-196, appeals the denial of his 28 U.S.C. § 2241 petition for writ of habeas corpus. In his petition, Castro alleged that his 169-month sentence for conspiring to possess heroin with intent to distribute was so excessive as to constitute cruel and unusual punishment. Castro asserts that the district court erred when it

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

denied his petition without allowing him to file a supporting memorandum. Castro's argument is inconsistent with the plain language of 28 U.S.C. § 2243, which authorizes a denial of a petition for a writ of habeas corpus when it appears from the application that the applicant is not entitled to the writ. Castro's allegation in his petition is a claim that the sentence originally imposed is unconstitutional, and thus Castro has not shown that the district court erred in concluding that Castro was attempting to use his 28 U.S.C. § 2241 petition as a means of obtaining 28 U.S.C. § 2255 relief. See Ojo v. INS, 106 F.3d 680, 683 (5th Cir. 1997). Castro has also not shown that the district court erred in concluding that Castro had not met the requirements of 28 U.S.C. § 2255's savings clause and therefore that Castro was not entitled to relief pursuant to 28 U.S.C. § 2241. See Reyes-Requena v. United States, 243 F.3d 893, 901 (5th Cir. 2001). Because the district court correctly concluded that Castro was not entitled to relief, the district court properly denied Castro's petition. See 28 U.S.C. § 2243.

The judgment of the district court is therefore AFFIRMED.