

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 02-41023  
Summary Calendar

---

LARRY J. CULLUM,

Petitioner-Appellant,

versus

JONATHON DOBRE, Warden,

Respondent-Appellee.

-----  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:02-CV-338  
-----

December 16, 2002

Before JONES, STEWART, and DENNIS, Circuit Judge

PER CURIAM:\*

Larry J. Cullum (Cullum), federal prisoner # 48858-080, appeals the district court's dismissal of his 28 U.S.C. § 2241 habeas corpus petition challenging his jury-trial conviction for conspiracy to distribute methamphetamine, manufacturing phenylacetone, and filing false tax returns. In his petition, he averred that he is actually innocent of the offense of conviction and that the prosecutor manufactured and falsified evidence in an

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

effort to obtain his conviction. Cullum, relying on Apprendi v. New Jersey, 530 U.S. 466 (2000), also contended that the indictment was defective because it failed to allege a drug amount and the jury instructions were defective because they did not require the jury to determine the quantity of drugs. Lastly, he averred that his sentence was so excessive as to constitute cruel and unusual punishment.

Cullum has not established that he is entitled to present his claims under 28 U.S.C. § 2241 because he has not demonstrated that any of his claims are "based on a retroactively applicable Supreme Court decision which establishes that [he] may have been convicted of a nonexistent offense." See Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001); Wesson v. U.S. Penitentiary Beaumont, Tex., \_\_\_ F.3d \_\_\_ (5th Cir. Sept. 5, 2002, No. 01-41000), 2002 WL 31006173 at \*\*3-4. The district court's judgment is AFFIRMED.