

May 2, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-41639  
Summary Calendar

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CLARENCE DOUGLAS COAKLEY,

Petitioner-Appellant,

versus

JOHN M. TOMBONE, Warden,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:02-CV-587  
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Before JONES, DUHÉ, and CLEMENT, Circuit Judges.

PER CURIAM:<sup>1</sup>

Clarence Douglas Coakley ("Coakley"), federal prisoner # 16434-056, appeals the district court's dismissal of his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241. Coakley's petition stemmed from his 1996 convictions and sentences for possession and conspiracy to possess with intent to distribute cocaine.

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<sup>1</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

The district court did not err in dismissing the petition. Coakley's claim pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000), does not satisfy the test for filing a 28 U.S.C. § 2241 petition under the 28 U.S.C. § 2255 savings clause. See Wesson v. U.S. Penitentiary, Beaumont, TX, 305 F.3d 343, 347-48 (5th Cir. 2002), cert. denied, 123 S. Ct. 1374 (2003). Coakley's ineffective-assistance claims likewise may not be raised in a 28 U.S.C. § 2241 petition by way of the 28 U.S.C. § 2255 "savings clause," notwithstanding that Coakley may be unable to satisfy the requirements for pursuing his claims in a successive 28 U.S.C. § 2255 motion in the sentencing court. See Henderson v. Haro, 282 F.3d 862, 864 (5th Cir. 2002).

This appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

APPEAL DISMISSED.