

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50010  
Summary Calendar

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ABRAHAM PADILLA,

Petitioner-Appellant,

versus

R.D. MILES, Warden, FCI Bastrop,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-01-CV-813-SS  
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August 9, 2002

Before JONES, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Abraham Padilla, federal prisoner number 67276-079, filed an action in the Western District of Texas, invoking 28 U.S.C. § 2241 and challenging the conviction for which he is imprisoned on the ground that the sentencing court never made an affirmative finding of his guilt. The district court construed the action as a successive motion under 28 U.S.C. § 2255 and dismissed the motion because Padilla had not obtained leave of this court to file a second or successive 28 U.S.C. § 2255 motion and because

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

jurisdiction was not proper in the Western District of Texas. Padilla appealed.

Padilla is not required to obtain a certificate of appealability to appeal the dismissal of his 28 U.S.C. § 2241 application. See Ojo v. INS, 106 F.3d 680, 681-82 (5th Cir. 1997).

Padilla argues the merits of his substantive claims only and does not discuss whether the district court's procedural ruling was erroneous. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993) (issues not briefed are waived). The appeal is dismissed as frivolous. See FED. R. APP. P. 34(a)(2)(A).

APPEAL DISMISSED.