

December 9, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41094
Conference Calendar

ROGER EUGENE GRESHAM,

Petitioner-Appellant,

versus

R.D. MILES, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:03-CV-419

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Roger Eugene Gresham, federal prisoner # 29072-077, appeals the dismissal of his 28 U.S.C. § 2241 petition, in which he asserted that his indictment was invalid under Jones v. United States, 529 U.S. 848 (2000). The district court dismissed the petition because Gresham had not shown that relief under 28 U.S.C. § 2255 was inadequate or ineffective so as to warrant relief under 28 U.S.C. § 2241.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gresham does not specifically challenge the district court's determination. Instead, he conclusionally asserts that he should be permitted to proceed under 28 U.S.C. § 2241 because he has been denied leave to file a successive 28 U.S.C. § 2255 motion. His argument is without merit: "a prior unsuccessful § 2255 motion, or the inability to meet AEDPA's 'second or successive' requirement, does not make [28 U.S.C.] § 2255 inadequate or ineffective." Tolliver v. Dobre, 211 F.3d 876, 878 (5th Cir. 2000). The appeal is wholly without merit and is therefore DISMISSED as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).

Gresham has filed four prior unsuccessful motions for leave to file a successive 28 U.S.C. § 2255 motion, and he has filed one prior unsuccessful 28 U.S.C. § 2241 petition, asserting essentially the same grounds as he raises in the instant petition. He has been previously warned and sanctioned for repetitively filing frivolous pleadings. Because Gresham continues to file repetitive pleadings asserting grounds for relief identical to those previously held to be without merit, he is ORDERED to pay \$150 in sanctions to the clerk of this court. The clerk is DIRECTED to not accept for filing any pleadings from Gresham until the sanction is paid in full. Gresham is further CAUTIONED that any future frivolous filing in this court or any court subject to this court's jurisdiction will subject him to additional sanctions.

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APPEAL DISMISSED; SANCTIONS IMPOSED; ADDITIONAL SANCTIONS
WARNING ISSUED.