

August 7, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10494
Summary Calendar

RANDY PHILLIPS,

Petitioner-Appellant,

versus

COLE JETER, Warden, Federal Medical Center Fort Worth

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:04-CV-846

Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:*

Randy Phillips, federal prisoner # 04954-043, appeals the dismissal of his 28 U.S.C. § 2241 petition, in which he challenged his sentence of 151 months of imprisonment for his 1998 conviction of conspiracy to distribute a controlled substance. Phillips contends his sentence is unconstitutional in light of United States v. Booker, 543 U.S. 220 (2005), and Blakely v. Washington, 542 U.S. 296 (2004), because it was based on facts that were not set forth in his indictment or proven beyond a reasonable doubt.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Phillips' claims based on alleged errors that occurred at sentencing may not be asserted in a § 2241 petition. See Padilla v. United States, 416 F.3d 424, 425-26 (5th Cir. 2005).

Phillips' claims based on allegations that he is entitled to proceed under § 2241 are unavailing. Id. at 426-27.

APPEAL DISMISSED.