

August 28, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10926
Conference Calendar

HAROLD E. WHITMORE,

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. 3:05-CV-839

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Harold E. Whitmore, federal prisoner # 24891-077, was convicted in 1994 of drug-trafficking offenses and money laundering, for which he received concurrent 240-month prison terms. He appeals the district court's dismissal of his 28 U.S.C. § 2241 habeas corpus petition, arguing that his sentence was illegal because it was based on facts not submitted to the jury and proved beyond a reasonable doubt, in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000). Whitmore argues

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that his claims should be allowed to proceed under the savings clause of 28 U.S.C. § 2255. Whitmore's argument is unavailing in light of this court's decision in Padilla v. United States, 416 F.3d 424, 426-27 (5th Cir. 2005).

AFFIRMED.