

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2008

No. 08-40441
Conference Calendar

Charles R. Fulbruge III
Clerk

FERNANDO TENORIO

Petitioner-Appellant

v.

PAUL A KASTNER, Warden

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:07-CV-107

Before DAVIS, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

Fernando Tenorio, federal prisoner # 38994-018, appeals the dismissal of his 28 U.S.C. § 2241 petition challenging the validity of his conviction for conspiracy to possess with the intent to distribute and possession with the intent to distribute cocaine, in violation of 46 U.S.C. § 1903 (now codified at 46 U.S.C. § 70503), and resulting 252-month sentence. Tenorio has not shown that the district court erred by concluding that his claims, which arose from events that occurred prior to sentencing, attacked the validity of his conviction and sentence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and therefore that the petition was properly construed as a 28 U.S.C. § 2255 motion. See *Tolliver v. Dobre*, 211 F.3d 876, 877 (5th Cir. 2000); *Cox v. Warden, Fed. Detention Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990). He also has failed to demonstrate that he should be permitted to proceed with his § 2241 petition under the savings clause of § 2255(e), as he has not shown that his claims are based on a retroactively applicable Supreme Court case which establishes that he was convicted of a nonexistent offense. See *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). Accordingly, the district court's judgment is AFFIRMED.