

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-3805  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

KENNETH LINN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CR 84 283 E)

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April 15, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:<sup>1</sup>

Linn appeals the dismissal for lack of jurisdiction of his request for reduction of under Fed. R. Crim. P. 32. We affirm.

I.

In July 1984, Kenneth Linn was charged with a continuing criminal enterprise offense in violation of 21 U.S.C. § 848, along with various drug trafficking offenses. Linn was a fugitive until his apprehension on December 6, 1986, in Seattle, Washington, when

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<sup>1</sup>Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

he was arrested for a two-kilogram cocaine sale. He was convicted of controlled substance violations in the Western District of Washington and received a sentence of ten years of imprisonment.

In January 1988, following an adverse jury verdict in the Eastern District of Louisiana, Linn was convicted on all charged counts. The sentencing judge ordered Linn to serve 20 years for the Louisiana conviction, to run consecutively to the ten-year sentence from the Western District of Washington. This court affirmed Linn's conviction in November 1989.

In May 1990, the Western District of Washington reduced Linn's sentence in that district to seven years. Linn then moved for a reduction of his sentence under Fed. R. Crim. P. 35(b) in the Eastern District of Louisiana. Linn requested a reduction in sentence and a hearing to determine the amount of cocaine attributable to him. Linn requested the hearing on the amount of cocaine for use in proceedings before the Parole Commission. The sentencing judge had not made a determination of the amount of cocaine attributable to Linn because he found that the quantity of cocaine had "no bearing whatsoever on the sentence to be imposed . . . ."

In June 1992, the Eastern District of Louisiana ordered a two-year reduction in sentence pursuant to Fed. R. Crim. P. 35(b). In a letter to the district court, Linn asked the court to resolve alleged disputed issues of fact about the quantity of cocaine. Linn stated that the Parole Commission "extrapolated" testimony concerning cocaine quantities to "maroon [him] in a higher level

security designation than [he] merit[s]." **Id.** He explained that the lack of a court determination of cocaine quantity "is adversely affecting my conditions of confinement." **Id.** In a second letter in August 1992, Linn requested that the court consider a Fed. R. Crim. P. 32 motion based on alleged inaccurate information provided by the Government.

The district court declined to consider Linn's request to resolve alleged disputed issues of fact. The district court found that the request should be brought as a writ of habeas corpus under 28 U.S.C. § 2241 in the district where Linn is incarcerated, because it is a challenge to factual findings of the Parole Board that concerns the execution of Linn's sentence. This appeal followed.

## II.

Linn argues that his request for a Fed. R. Crim. P. 32 hearing concerning the amount of cocaine attributable to him is properly brought as a Fed. R. Crim. P. 35 motion. He is incorrect.

It is clear from the record that Linn requests a hearing to dispute findings of fact by the Parole Board. Linn must bring a challenge to the Parole Board's execution of his sentence in a habeas corpus petition under 28 U.S.C. § 2241. **United States v. Cleto**, 956 F.2d 83, 84 (5th Cir. 1992).

A petition under 28 U.S.C. § 2241 must be filed in the district where the claimant is incarcerated. **United States v. Mares**, 868 F.2d 151, 151-52 (5th Cir. 1989). Linn is incarcerated in the Northern District of Texas. Linn filed his request

concerning the execution of his sentence in the Eastern District of Louisiana. The district court properly held that it did not have jurisdiction to hear the petition. **United States v. Gabor**, 905 F.2d 76, 78 (5th Cir. 1990).

AFFIRMED.