

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4609
Conference Calendar

ATELBERTO CARLON-SALGADO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. CA5-911-22
- - - - -
(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

"[A] petition under [28 U.S.C.] § 2241 attacking custody resulting from a federally imposed sentence may be entertained only where the petition establishes that the remedy provided for under [28 U.S.C.] § 2255 is 'inadequate or ineffective to test the legality of his detention.'" Cox v. Warden, Federal Detention Center, 911 F.2d 1111 (5th Cir. 1990) (quoting McGhee v. Hanberry, 604 F.2d 9, 10 (5th Cir. 1979)).

Salgado argues that his § 2255 remedy is inadequate and

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

ineffective, because the sentencing judge is biased against him for his refusal to testify against his co-defendants. The fact that a § 2255 motion is or will be denied, however, does not render that remedy inadequate and ineffective. McGhee v. Hanberry, 604 F.2d at 10-11; Wood v. Blackwell, 402 F.2d 62, 63 (5th Cir. 1968), cert. denied, 393 U.S. 1060 (1969).

Furthermore, the record does not indicate any evidence of bias, and Salgado does not cite any evidence of such bias other than the judge's denial of his § 2255 motion. Salgado has failed to show that his § 2255 motion was inadequate or ineffective, and cannot petition a non-sentencing court for relief under § 2241. That court is without jurisdiction to order his resentencing. See Solsona, 821 F.2d at 1132 (district court which was not sentencing court was without jurisdiction to entertain § 2255 claims). The district court's denial of the § 2241 petition is AFFIRMED.