

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10401  
Summary Calendar

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RICKY JOE SHUGART,

Petitioner-Appellant,

VERSUS

CATHY HAWK, Director of the B.O.P., ET AL.,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
(4:94-MC-10-E)

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(October 25, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:<sup>1</sup>

Ricky Joe Shugart, *pro se*, appeals from the order transferring his 28 U.S.C. § 2255 claim. We **DISMISS** the appeal.

I.

Shugart, a *pro se* litigant proceeding *in forma pauperis*, filed a complaint characterized as a civil rights action, but also invoked 28 U.S.C. § 2241 (habeas relief). In his preliminary report, the magistrate judge construed Shugart's pleadings as a mixed civil action, consisting of a habeas action under 28 U.S.C.

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<sup>1</sup> Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

§ 2241, and for post conviction relief under 28 U.S.C. § 2255. The § 2241 allegations raised issues concerning Shugart's access to appellate counsel, and the § 2255 allegations challenged the reasonableness of Shugart's court-ordered restitution.<sup>2</sup>

The magistrate judge concluded that Shugart's § 2241 action was merely a "blatant forum shopping endeavor" to gain review of his § 2255 action in the Northern District of Texas, rather than in the Western District of Wisconsin where he was sentenced. Therefore, the magistrate judge recommended that the § 2241 action be dismissed and the § 2255 action transferred to the Western District of Wisconsin. The district court adopted the findings and recommendations of the magistrate judge.

## II.

Shugart contends that his action did not challenge the fact or duration of his confinement; therefore, he was not required to bring the action under § 2255.<sup>3</sup>

This court lacks jurisdiction to hear Shugart's appeal. Shugart bases jurisdiction on 28 U.S.C. § 1291 (appeal of a final order), and/or § 1292 (appeal of an interlocutory order upon certification of the question by the district court). The transfer of Shugart's claims is not a final order, and the district court did not certify the question for our review. Therefore, there is no jurisdiction under either § 1291 or § 1292. See **Persyn v.**

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<sup>2</sup> Shugart was convicted of making a false security. He was ordered to pay restitution of \$11,293.68.

<sup>3</sup> Shugart does not challenge the propriety of the dismissal of his § 2241 action.

**United States**, 935 F.2d 69, 72-73 (1991) (noting that transfer order not appealable unless question certified by district court). Furthermore, because Shugart may obtain review of the transfer order in the Seventh Circuit, this case does not permit review under the collateral order doctrine. **Id.** (recognizing that unless it is "effectively unreviewable" otherwise, an interlocutory order is not appealable under collateral order doctrine).

III.

For the foregoing reasons this appeal is

**DISMISSED.**