

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-40730  
Summary Calendar

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JAMES HOWARD HANEY, III,

Petitioner-Appellant,

versus

MICHAEL A. PURDY,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-98-CV-425  
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June 13, 2000

Before DAVIS, EMILIO M. GARZA and DENNIS, Circuit Judges.

PER CURIAM:\*

James Howard Haney, III, filed a 28 U.S.C. § 2241 petition in the district court. The district court construed this petition as a § 2255 motion and dismissed it, as Haney had filed two previous § 2255 motions and had not received permission from this court to file a successive § 2255 motion. Haney moves this court for a COA to appeal the district court's dismissal of this § 2255 motion. Because Haney has not made a credible showing that the district court erred in construing his § 2241 petition

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

as a § 2255 motion and dismissing it, we DENY his request for a COA. See Slack v. McDaniel, 120 S. Ct. 1595 (2000).

The district court's order is arguably ambiguous and could possibly be read as simply dismissing Haney's § 2241 petition on the basis that his claims are not properly raised in a § 2241 petition. To the extent that the order could be so read, this conclusion is not erroneous. See United States v. Cleto, 956 F.2d 83, 84 (5th Cir. 1992). Accordingly, we alternatively AFFIRM the judgment of the district court to the extent that court's order could be read as dismissing Haney's § 2241 petition because it does not state claims upon which § 2241 relief could be granted. See McGhee v. Hanberry, 604 F.2d 9, 10 (5th Cir. 1979); see also Tolliver v. Dobre, \_\_\_ F.3d \_\_\_ (5th Cir. May 3, 2000, No. 99-41420) 2000 WL 530326 \*1.