

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 99-41462
Summary Calendar

DALTON LEE McEWEN,

Appellant,

versus

JOHN TOMBONE, Warden, Federal
Correctional Complex Beaumont,

Appellee.

Petitioner-

Respondent-

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:99-CV-697

July 6, 2000

Before HIGGINBOTHAM, DEMOSS and STEWART, Circuit Judges:

PER CURIAM:*

Dalton Lee McEwen, a federal prisoner (# 09479-035), appeals from the district court's dismissal of his 28 U.S.C.

§ 2241 petition, in which McEwen challenged not the execution of his federal sentence but the constitutionality of his underlying criminal conviction. McEwen has argued that he may challenge

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

his conviction in a § 2241 petition because his remedy under 28 U.S.C. § 2255 is “inadequate or ineffective” due to the “serious” and “fundamental” constitutional violations at issue.

A prisoner may seek § 2241 relief if he can establish “that the remedy provided for under § 2255 is inadequate or ineffective to test the legality of his detention.” Cox v. Warden, Fed. Detention Ctr., 911 F.2d 1111, 1113 (5th Cir. 1990) (internal quotation marks and citation omitted). A prior unsuccessful § 2255 motion is not, in and of itself, sufficient to establish the inadequacy or ineffectiveness of the remedy under § 2255. McGhee v. Hanberry, 604 F.2d 9, 10 (5th Cir. 1979). Moreover, a federal prisoner’s inability to meet the requirements for filing a “second or successive” § 2255 motion does not make the remedy inadequate or ineffective. See Tolliver v. Dobre, __ F.3d __, No. 99-41420 (5th Cir. May 3, 2000), 2000 U.S. App. 8659 at *2. McEwen’s § 2241 petition was only an attempt to circumvent the limitations on filing a successive § 2255 motion. Accordingly, the judgment of the district court is AFFIRMED.