

February 13, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40369
Conference Calendar

TERRY LEE SCOTT,

Petitioner-Appellant,

versus

WARDEN CHILDRESS,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:06-CV-12

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Terry Lee Scott, federal prisoner # 62305-079, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition challenging the sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute cocaine and crack cocaine.

Scott argues under United States v. Booker, 543 U.S. 220 (2005), that his sentence violated the Sixth Amendment because it was enhanced based upon facts found by a judge. The decision in Booker does not apply retroactively to cases on collateral

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

review, and a Booker claim does not satisfy the test for filing a § 2241 petition under the savings clause of 28 U.S.C. § 2255. Padilla v. United States, 416 F.3d 424, 427 (5th Cir. 2005).

For the first time on appeal, Scott raises a factual challenge to the district court's application of a four-level enhancement for his being a leader or organizer of the criminal activity. This newly raised factual claim is not reviewable for the first time on appeal. See Leverette v. Louisville Ladder Co., 183 F.3d 339, 342 (5th Cir. 1999).

AFFIRMED.