

April 11, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41378
Summary Calendar

TERRY ANTHONY SMITH,

Petitioner-Appellant,

versus

TOM TOMBONE,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:02-CV-34
- - - - -

Before JONES, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:*

Terry Anthony Smith, federal prisoner # 04120-078, appeals the district court's dismissal with prejudice of his 28 U.S.C. § 2241 petition. Smith argues that: (1) his guilty plea was involuntary because he did not receive notice that his sentence would be enhanced by his prior convictions; and (2) the district court lacked jurisdiction to enhance his sentence because the indictment did not allege that he had prior convictions. Smith acknowledges

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that his claim is time barred under 28 U.S.C. § 2255, but seeks to bring his claims under 28 U.S.C. § 2241.

Unfortunately for Smith, he has failed to identify a retroactively applicable Supreme Court decision which establishes that he may have been convicted of a nonexistent offense. His claims, therefore, do not satisfy the savings clause of 28 U.S.C. § 2255, and thus he is not entitled to utilize 28 U.S.C. § 2241. Reyes-Reguena v. United States, 243 F.3d 893 (5th Cir. 2001). This appeal is without arguable merit and is frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). It is therefore dismissed. 5TH CIR. R. 42.2. Smith's "Motion for Supplement Plead to Add Pursuant to FED. R. CIV. PRO. 15(d)" is DENIED.

APPEAL DISMISSED; MOTION DENIED.