United States Court of Appeals
Fifth Circuit

F I L E D

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41765
Conference Calendar

MICHAEL ANTHONY CASTRO,

                                        Petitioner-Appellant,

versus

R. D. MILES, Warden,

                                        Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:03-CV-242

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:[*]

    Michael Anthony Castro, federal prisoner # 65029-080, filed

a 28 U.S.C. § 2241 petition challenging the sentence he received

as a result of his 1993 conviction for being a felon in

possession of a firearm. The district court dismissed the

petition and Castro timely appealed. Castro argues that his

prior convictions were improperly used to enhance his sentence

under the Armed Career Criminal Act and that he received

ineffective assistance of counsel at sentencing. Castro has

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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that this opinion should not be published and is not precedent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.

failed to identify a retroactively applicable Supreme Court
decision which establishes that he may have been convicted of a
nonexistent offense. His claim, therefore, does not satisfy the
savings clause of 28 U.S.C. § 2255, and he is not entitled to
utilize 28 U.S.C. § 2241. See Reyes-Requena v. United States,
243 F.3d 893, 903-04 (5th Cir. 2001).

This appeal is without arguable merit and, therefore, it is
DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20
(5th Cir. 1983); 5TH CIR. R. 42.2. Additionally, Castro's
petition is repetitious. Castro has previously filed a 28 U.S.C.
§ 2241 petition challenging this same conviction and raising
identical claims. Castro v. Chandler, No. 01-40915 (5th Cir.
Dec. 28, 2001) (unpublished) (affirming dismissal of 28 U.S.C.
§ 2241 petition). Castro is warned that any future frivolous
pleadings under 28 U.S.C. § 2241 challenging this conviction will
invite the imposition of sanctions

APPEAL DISMISSED; SANCTION WARNING ISSUED.