

October 24, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40036
Conference Calendar

EZEQUIEL GODINEZ-CERVANTES,

Petitioner-Appellant,

versus

UP OUTLAW, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:05-CV-618

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Ezequiel Godinez-Cervantes, federal prisoner # 09671-079, was sentenced to a 240-month term of imprisonment following a 1997 guilty plea to distribution of heroin. Godinez-Cervantes appeals the district court's dismissal of a 28 U.S.C. § 2241 habeas corpus petition challenging his conviction and sentence in light of United States v. Booker, 543 U.S. 220 (2005). Godinez-Cervantes argues that he should be permitted to pursue § 2241 relief in accordance with the savings clause of 28 U.S.C. § 2255.

Godinez-Cervantes has not shown that the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

erred in construing his purported § 2241 petition as an unauthorized § 2255 motion over which it lacked jurisdiction. Tolliver v. Dobre, 211 F.3d 876, 877-78 (5th Cir. 2000). He has also failed to establish that his Booker claim is cognizable under the savings clause of § 2255. Padilla v. United States, 416 F.3d 424, 427 (5th Cir. 2005). Consequently, we AFFIRM the district court's dismissal of the petition.