

## United States Court of Appeals

Fifth Circuit

**F I L E D**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

July 24, 2007

Charles R. Fulbruge III  
ClerkNo. 06-10348  
Summary Calendar

THOMAS MCBARRON,

Plaintiff-Appellant,

versus

COLE JETER, Warden Federal Medical Center Fort Worth,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:05-CV-497  
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Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:\*

Thomas McBarron filed an alleged 28 U.S.C. 2241 habeas corpus petition and raised claims of deliberate indifference to serious medical needs. The district court denied the petition after determining that McBarron could proceed under § 2241 and that McBarron's claims lacked merit. McBarron appeals that denial. He argues that his claims have merit and that the district court erred by not giving him sufficient opportunity to respond to Jeter's answer before denying his petition, by construing his postjudgment motion as a motion to reconsider, and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by not ruling on his motion for appointment of expert witnesses. McBarron moves this court for a conference, appointed counsel, and an expedited appeal. He also requests that this court strike the appellee's brief.

McBarron was not entitled to proceed under § 2241 because his claims would not entitle him to immediate release if he prevailed on them. See Spina v. Aaron, 821 F.2d 1126, 1127-28 (5th Cir. 1987). Consequently, McBarron's claims are not cognizable in a habeas action. See id. The district court's denial of relief is AFFIRMED on this alternate basis. See Emery v. Johnson, 139 F.3d 191, 195 (5th Cir. 1997). All outstanding motions are DENIED.