

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 13, 2009

No. 08-60921

Summary Calendar

Charles R. Fulbruge III
Clerk

ROBERTO ESQUIVEL CABRERA,

Petitioner-Appellant

v.

BRUCE PEARSON, Warden,

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:08-CV-193

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Roberto Esquivel Cabrera, federal prisoner 41078-018, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition, in which he challenged his illegal reentry conviction and resulting 110-month sentence. The district court determined that Esquivel Cabrera could not proceed under § 2241 because his claims did not satisfy the requirements of the "savings clause" of 28 U.S.C. § 2255(e). Esquivel Cabrera's brief is entirely devoted to the merits of his claims for relief. Esquivel Cabrera has not argued, much less shown, that he is entitled

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to proceed under § 2241 based on the savings clause of § 2255(e). *See Reyes-Requena v. United States*, 243 F.3d 893, 900-01, 904 (5th Cir. 2001). Esquivel Cabrera has waived the issue by failing to brief it. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993); *Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). The judgment of the district court is AFFIRMED. Esquivel Cabrera's motion for appointment of counsel is DENIED. *See Schwander v. Blackburn*, 750 F.2d 494, 502 (5th Cir. 1985).