

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-691

In Re: KEITH NORLAND EIDSON; GENE WESLEY
HARTSELL; CHEROKEE RESOURCES, INCORPORATED,

Petitioners.

On Petition for Writ of Habeas Corpus. (CR-93-186-P)

Submitted: September 23, 1997 Decided: November 17, 1997

Before HALL, ERVIN, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Keith Norland Eidson, Gene Wesley Hartsell, Petitioners Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Petitioners filed in this court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (1994). They allege that their due process rights have been violated, the trial court committed plain error when sentencing them, and they are innocent.

A court will not entertain a § 2241 petition unless a motion under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997), is "inadequate or ineffective to test the legality of [an inmate's] detention." 28 U.S.C.A. § 2255; see Swain v. Pressley, 430 U.S. 372, 381 (1977). The petitioner bears the burden of showing the inadequacy or ineffectiveness of a § 2255 motion. See McGhee v. Hanberry, 604 F.2d 9, 10 (5th Cir. 1979).

Petitioners have failed to present any facts showing that a § 2255 motion provides an inadequate remedy. We therefore deny leave to proceed in forma pauperis and dismiss the § 2241 petition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED