

APR 01 2013

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MESA RITH,

Petitioner - Appellant,

v.

HECTOR A. RIOS, Jr., Warden,

Respondent - Appellee.

No. 10-16940

D.C. No. 1:10-cv-01035-LJO-GSA

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O'Neill, District Judge, Presiding

Submitted March 12, 2013\*\*  
San Francisco, California

Before: WALLACE, McKEOWN, and IKUTA, Circuit Judges.

Rith appeals from the district court's judgment of dismissal for lack of jurisdiction of his 28 U.S.C. § 2241 petition. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Although Rith's argument that he was entitled to bring a section 2241 petition was based on his contention that he was "actually innocent," he did not argue that he was actually innocent of the crime of conviction. His argument that he was innocent of his career offender status for sentencing purposes is "not cognizable as a claim of actual innocence." *Marrero v. Ives*, 682 F.3d 1190, 1195 (9th Cir. 2012) *cert. denied*, 2013 WL 598706 (Feb. 19, 2013). He has not argued that any of the exceptions to this rule recognized by our sister circuits apply here. *See Id.* at 1194-95. Accordingly, the district court did not err in holding it had no jurisdiction to hear the petition. *Id.* at 1195.

**AFFIRMED.**