

FILED

August 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10611
Conference Calendar

JEFFREY M. ORTIZ,

Petitioner-Appellant,

versus

L. E. FLEMING, Warden, Federal Medical Center-Fort Worth,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:03-CV-1442-Y

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Jeffrey M. Ortiz, federal prisoner # 85990-012, appeals from the district court's denial of his 28 U.S.C. § 2241 petition. In that petition, Ortiz sought habeas corpus relief on the ground that the Bureau of Prisons ("BOP") violated his constitutional rights by informing him he was eligible for early release under 18 U.S.C. § 3621(e)(2)(B) and then subsequently determining that he was ineligible for early release. In an appeal from the denial of habeas relief, "this Court reviews the district court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

determinations of law de novo and its findings of facts for clear error." Venegas v. Henman, 126 F.3d 760, 761 (5th Cir. 1997).

Ortiz did not have a constitutionally protected right to early release under 18 U.S.C. § 3621(e)(2)(B). See Rublee v. Fleming, 160 F.3d 213, 216-17 (5th Cir. 1998). Accordingly, the district court properly denied Ortiz's instant petition. This appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because it is frivolous, the respondent's motion to dismiss the instant appeal is GRANTED. All other outstanding motions are DENIED. The instant appeal is DISMISSED AS FRIVOLOUS. See 5TH CIR. R. 42.2.

MOTION TO DISMISS GRANTED; ALL OTHER OUTSTANDING MOTIONS DENIED; APPEAL DISMISSED AS FRIVOLOUS.