

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-41599  
Conference Calendar

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JOSEPH GAGLIANO,

Petitioner-Appellant,

versus

N.L. CONNER, Warden; DAVID GRANT, Dr.;  
FEDERAL BUREAU OF PRISONS,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 5:98-CV-209  
- - - - -

August 26, 1999

Before KING, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Joseph Gagliano appeals the district court's denial of his 28 U.S.C. § 2241 petition. Gagliano argues that he has a procedural due process right and protected liberty interest to participate in a drug abuse treatment program under 18 U.S.C. § 3621. Successful completion in the program could entitle Gagliano to a one-year sentence reduction. See § 3621(e)(2)(B). Gagliano also argues that the district court erred by failing to conduct an evidentiary hearing.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gagliano does not have a protected liberty interest under § 3621. See *Rublee v. Fleming*, 160 F.3d 213, 217 (5th Cir. 1998). Accordingly, Gagliano's appeal is DISMISSED as frivolous. Because Gagliano's petition was resolved on a purely legal question, the district court did not commit error when it did not conduct an evidentiary hearing. See *United States v. Tubwell*, 37 F.3d 175, 179 (5th Cir. 1994).

DISMISSED as frivolous.