

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20129
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOE EVELINE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CV-3801,
H-94-CR-185-1

December 11, 2002

Before JOLLY, DAVIS, and JONES, Circuit Judges.

PER CURIAM:*

Joe Eveline, Texas state prisoner # 713389, has requested a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2241 habeas petition challenging the manner in which his federal sentence is being calculated. Because he is a federal prisoner seeking relief under 28 U.S.C. § 2241, Eveline is not required to obtain a COA in order to appeal. See Ojo v. INS, 106 F.3d 680, 681-82 (5th Cir. 1997).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Eveline is not entitled to credit on his federal sentence because he has not commenced his federal sentence and he is receiving credit for the state sentence which he is presently serving. See 18 U.S.C. §§ 3585(a), (b); United States v. Dovalina, 711 F.2d 737, 740 (5th Cir. 1983).

Because his appeal has no arguable merit, Eveline's motion to proceed in forma pauperis (IFP) on appeal is DENIED and his appeal is DISMISSED as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Eveline's motion for COA is DENIED as unnecessary.

APPEAL DISMISSED; MOTION TO PROCEED IFP DENIED; MOTION FOR COA IS DENIED AS UNNECESSARY.