

March 1, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-11049  
Summary Calendar

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RENE R. BELASCO,

Petitioner-Appellant,

versus

JOSEPH BIDDEN; BUREAU OF PRISONS; JOHN/JANE DOE,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:03-CV-165  
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Before JOLLY, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Petitioner-Appellant Rene R. Belasco (Belasco), federal prisoner no. 15787-053, is serving a 216-month sentence for a drug-trafficking conspiracy. Belasco filed suit under 28 U.S.C. § 2241 complaining that the Bureau of Prisons (BOP) is calculating his good-time credits in a manner contrary to 18 U.S.C. § 3624(b) and thus depriving him of earned good-time credits without due process of law.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court dismissed Belasco's complaint sua sponte on grounds that Belasco has no constitutionally protected right to good-time credits. We review the district court's decision de novo. See Madison v. Parker, 104 F.3d 765, 767 (5th Cir. 1997).

Although there is no intrinsic constitutional right to good time credit, when the government creates such a right, a prisoner's interest in good time falls within the Fourteenth Amendment's liberty concerns. See id. at 768. We have yet to determine whether a federal statute creates a constitutionally protected interest in good-time credits. See 18 U.S.C. § 3624(b); see also Wolff v. McDonnell, 418 U.S. 539, 557 (1974) (addressing state statute); Henson v. U.S. Bureau of Prisons, 213 F.3d 897, 898 (5th Cir. 2000) (assuming without deciding). If there is a constitutional interest, Belasco's claim would be properly raised in a 28 U.S.C. § 2241 habeas proceeding. See Davis v. Fecht, 150 F.3d 486, 490 (5th Cir. 1998); United States v. Cleto 956 F.2d 83, 84 (5th Cir. 1992).

Here, however, the factual record is undeveloped, particularly with regard to the time Belasco has served and the good-time for which he has been credited. In addition, the BOP has not had an opportunity to clarify, for the record, its methods of calculating good-time in general or Belasco's good-time credit in particular. Consequently, the record on appeal is inadequate for us to conduct a meaningful appellate review. Accordingly, we vacate the judgment of the district court and remand the case to that court for further

development of the record. See Madison, 104 F.3d at 769 (vacating and remanding).

Belasco has filed a motion for appointment of counsel and for consolidation of this case with another case, which he asserts is pending in the Northern District of Texas. These and any other outstanding motions are denied.

JUDGMENT VACATED AND REMANDED; ALL MOTIONS DENIED.