

**FILED**

July 7, 2004

Charles R. Fulbruge III  
Clerk

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 03-60822  
Summary Calendar

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MARCUS B. GORDON,

Appellant,

Petitioner-

versus

WARDEN YUSUFF,

Appellee.

Respondent-

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 5:02-CV-585-BrSu  
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Before SMITH, DeMOSS AND STEWART, Circuit Judges.

PER CURIAM:\*

Marcus B. Gordon, federal prisoner # 10255-035, appeals the district court's dismissal of his 28 U.S.C. § 2241 habeas petition for lack of jurisdiction based on his failure to exhaust his administrative remedies. Gordon is serving 87 months' imprisonment for his guilty plea conviction to possess with intent to distribute cocaine base.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gordon argues that the district court erred in denying his Motion to Correct or Modify the Record. The additional documents repeat the assertions made in other documents filed in the record. Thus, the district court did not err in finding that the documents were immaterial to the parties and in denying the motion to modify the record. FED. R. APP. P. 10.

Gordon argues that he exhausted all available remedies and that his administrative appeal should not have been dismissed as untimely because he was not provided with all the necessary paperwork from prison officials.

Although the record reflects that Gordon had been attempting to obtain the response from the regional office and continued to attempt to obtain it after his appeal was rejected, there is no indication in the record that, after receiving the rejection notice, he provided the Central Office in Washington any further explanation for filing an untimely appeal. Because Gordon failed to demonstrate that he had pursued all administrative remedies available to him, the district court did not err in dismissing the petition for lack of jurisdiction based on a failure to exhaust administrative remedies. United States v. Wilson, 503 U.S. 329, 335-36 (1992); Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994).

Further, Gordon failed to demonstrate that he is entitled to a credit on his federal sentence during the time for which he received credit on his state sentence. See 18 U.S.C. § 3585(b); United States v. Dovalina, 711 F.2d 737, 740 (5th Cir. 1983).

Gordon's motion to modify the record on appeal is DENIED because this court generally does not consider new evidence on appeal. See Theriot v. Parish of Jefferson, 185 F.3d 477, 491 n.26 (5th Cir. 1999). Gordon's motion to expedite appeal is DENIED as moot. The respondent's motion to supplement the record is also DENIED as moot. AFFIRMED.