

December 16, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10523
Conference Calendar

BRETT MAURICE DISIERE,

Petitioner-Appellant,

versus

DOUG DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:04-CV-86-C

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

In 2002, Brett Maurice Disiere, Texas prisoner # 865838, pleaded guilty to possession of a deadly weapon in a penal institution and was sentenced to four years of state imprisonment. At the time he pleaded guilty, Disiere was serving a five-year state sentence for his 1999 conviction for burglary of a habitation. Additionally, a 30-month federal sentence was pending against Disiere for his conviction in 2000 for making threats against the President of the United States. Disiere

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

appeals the district court's denial of his 28 U.S.C. § 2241 claim that he should have been transferred to federal custody to serve his federal sentence upon completion of serving his first state sentence for burglary of a habitation. Because Disiere is challenging only the denial of relief under 28 U.S.C. § 2241, he is not required to obtain a certificate of appealability (COA). Therefore, his motion for a COA is DENIED as unnecessary.

Disiere has remained in state custody and is serving his second state sentence even though it was imposed after his federal sentence was imposed. Disiere argues that his federal sentence should not have been postponed and, citing 18 U.S.C. § 3584(a), that the district court relied on outdated law in dismissing his petition.

Disiere's contentions are without merit. See 18 U.S.C. § 3585(a); Free v. Miles, 333 F.3d 550, 552 (5th Cir. 2003); Causey v. Civiletti, 621 F.2d 691, 694 (5th Cir. 1980). Therefore, the judgment of the district court is AFFIRMED.