

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-31183
Conference Calendar

HAI VAN NGUYEN,

Petitioner-Appellant,

versus

JOSEPH P. YOUNG,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:04-CV-1458

Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Hai Van Nguyen (Nguyen), federal prisoner # 18720-018, appeals the district court's dismissal without prejudice of his 28 U.S.C. § 2241 petition. Nguyen was sentenced to 165 months in prison based on convictions for racketeering, conspiring to engage in racketeering, conspiring to interfere with commerce by robbery, and interfering with commerce by robbery. Nguyen attempted to challenge the method by which the Bureau of Prisons (BOP) calculates good time credits, but the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

dismissed the petition because Nguyen had failed to exhaust his administrative remedies before filing his petition in federal court.

Because Nguyen is a federal prisoner proceeding under 28 U.S.C. § 2241, he is not required to obtain a certificate of appealability. See Jeffers v. Chandler, 253 F.3d 827, 830 (5th Cir. 2001). Nguyen concedes that he did not exhaust the three-level administrative remedy process. He asserts, however, that his failure to exhaust should be excused because pursuing administrative relief would be futile and because he would suffer irreparable harm by following the administrative process. Nguyen has not established that the district court abused its discretion in dismissing his petition without prejudice. See Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994). The judgment is thus AFFIRMED.