

April 18, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41143
Summary Calendar

ROSENDO OLGUIN, SR.,

Petitioner-Appellant,

versus

EDWARD PEREZ, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:03-CV-469

Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Rosendo Olguin, Sr., federal prisoner # 08141-078, appeals the district court's order granting the respondent's motion for summary judgment and dismissing his 28 U.S.C. § 2241 habeas petition. Olguin argues that he is entitled to credit on his federal sentence for conspiracy to possess with intent to distribute marijuana for time served while he was awaiting the imposition of his federal sentence.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 respondent provided summary judgment evidence that Olguin received credit on his state sentence for the time he was being held by federal officers pending his federal sentencing, and Olguin has not refuted that evidence. See FED. R. CIV. P. 56(c). Therefore, Olguin has not demonstrated that he is entitled to any additional credit for time served on his federal sentence. See 18 U.S.C. § 3585(a), (b).

The district court did not err in granting the respondent's motion for summary judgment and in dismissing the 28 U.S.C. § 2241 habeas petition.

AFFIRMED.