

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

No. 19-30074
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 23, 2019

Lyle W. Cayce
Clerk

RICHARD CRUZ,

Petitioner-Appellant

v.

SCOTT WILLIS, Warden,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:18-CV-1649

Before HAYNES, GRAVES, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

On April 8, 2013, Richard Cruz, federal prisoner # 37737-069, pleaded guilty to conspiracy to possess with intent to distribute at least three and one-half but less than five kilograms of cocaine within 1000 feet of a protected location and was sentenced to 96 months of imprisonment in the District of Puerto Rico. On August 18, 2015, he pleaded guilty to conspiracy to possess with intent to distribute over five hundred grams of cocaine and unlawful use

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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of a communication facility in the District of Massachusetts, and was sentenced to a total of 84 months of imprisonment; the court ordered that 60 months of the sentence be served concurrently with the Puerto Rico sentence and 24 months of the sentence be served consecutively to that sentence.

Cruz moves for leave to proceed in forma pauperis (IFP) on appeal from the denial of his 28 U.S.C. § 2241 petition challenging the manner in which his Massachusetts sentence is being executed. He argues that he was entitled to credit against his Massachusetts sentence for the time period from September 13, 2012, the date of his arrest, until August 18, 2015, the date of his sentencing in that case. To proceed IFP, Cruz must demonstrate financial eligibility and a nonfrivolous issue for appeal. *See* FED. R. APP. P. 24(a); 28 U.S.C. § 1915(a)(1); *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

The Bureau of Prisons (BOP) gave Cruz credit against his Puerto Rico sentence for the time served from September 13, 2012, to April 8, 2013, the date of his sentencing in the Puerto Rico case and for the time served from April 8, 2013, to August 18, 2015. His Massachusetts sentence did not begin to run until his sentencing in that case on August 18, 2015. Because he had already received credit for the time period at issue against his Puerto Rico sentence, the district court correctly held that the BOP did not err in finding that Cruz was not entitled to credit against his Massachusetts case for that time period. *See* 18 U.S.C. § 3585(b); *United States v. Wilson*, 503 U.S. 329, 337 (1992); *Leal v. Tombone*, 341 F.3d 427, 430 (5th Cir. 2003).

For these reasons, Cruz has not shown that he will raise a nonfrivolous issue for appeal. *See Carson*, 689 F.2d at 586; *Springer v. Willis*, 653 F. App'x 324, 324 (5th Cir. 2016) (applying *Carson* to a § 2241 case). Accordingly, Cruz's IFP motion is DENIED, and his appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.