

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4708

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES EDWARD BASCO,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(CR 85 30002 01)

(December 14, 1992)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

In 1985, Charles Edward Basco pleaded guilty to conspiracy to commit mail fraud, receiving three years suspended on condition that Basco first be confined for three months, followed by probation.

In 1987, nearly two years later, Basco was arrested and taken into custody on state charges for conspiracy to commit and

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

solicitation of first-degree murder. He escaped but was recaptured about two weeks later. A federal detainer was issued for Basco's violation of a condition of probation. The district court ordered Basco to appear at a probation-revocation hearing. In 1988, a hearing was held, and counsel for Basco argued that if probation was revoked, Basco should be given credit for time served even if the time served was for other charges. The district court revoked Basco's probation and imposed a term of 33 months.

Basco, however, remained in state custody because he was unable to post the \$100,000 bond set for the state charges. Basco was convicted and sentenced for the state court charges in 1990. On July 12, 1991, Basco was placed in the custody of the federal prison.

Basco filed a § 2241 petition for habeas corpus. In his petition, Basco requested credit against his federal sentence from the time of the federal detainer in 1987 until the time he was sentenced for the state charge in 1990. The district court denied relief because, even though a federal detainer had issued while Basco was in state custody, he was not entitled to a credit toward his federal sentence since the federal detainer was not the sole reason Basco remained in state custody.

Basco argues that because the state court ordered the state sentence to run concurrently with the federal sentence and because only his indigence prevented his posting of bond, the district court erred when it determined that he was not entitled to credit

for the time served for the state charge. This argument lacks merit.

Basco committed his federal offense before November 1, 1987, and 18 U.S.C. § 3568 applies, which requires that "[t]he sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is *received* at the penitentiary, reformatory, or jail for service of such sentence." (emphasis added). A credit is authorized "for any days spent in custody in connection with the offense or acts for which sentence was imposed." See id. Congress clearly mandated that "[n]o sentence shall prescribe any other method of computing the term." Id.

"As a general rule, the Attorney General is not required to give credit toward a federal sentence for time spent by a prisoner serving the sentence imposed by another jurisdiction for an unrelated offense." U.S. v. Dovalina, 711 F.2d 737, 740 (5th Cir. 1983) (citation omitted). We have held, however, that § 3568 would not bar a credit for state incarceration that "was exclusively the product of such action by federal law enforcement officials as to justify treating the state jail as the practical equivalent of a federal one." Id. In Basco's case, state custody was not the "practical equivalent" of federal custody, nor was it an exclusive product of the federal detainer, since even without it Basco would have remained in custody. Other than the narrow exception of Dovalina, Congress has required strict compliance with § 3568. See Scott v. U.S., 434 F.2d 11, 20-21 (5th Cir. 1970). The state

judge's declaration during sentencing that the state sentence would run concurrently with the federal sentence did not counter the express provisions of § 3568 detailing when the federal sentence begins to run and which further mandate that "[n]o sentence shall prescribe any other method of computing the term." See id. Nor would § 3585 provide a different result, regarding § 3568 and applicable to offenses committed after November 1, 1987. See 18 U.S.C. § 3585.

Basco argues further that he was denied equal protection because, but for his indigence, he would not have had to serve a 33-month term of incarceration in the federal prison. This argument lacks merit.

Basco's equal protection argument is grounded, in part, on his claim that his federal sentence has been adversely affected because of his indigence. Basco's reliance on U.S. v. Gaines, 449 F.2d 143 (2nd Cir. 1971) is factually inapposite because, in that case, the time served for the state charges was "dead time" when the charges were later dismissed. See id. at 144. This Circuit has recognized that "a man should not be kept imprisoned solely because of his lack of wealth." Lebosky v. Saxbe, 508 F.2d 1047, 1051 (5th Cir. 1975) (citing Gaines). Basco may not, however, expand the scope of Lebosky by asserting a connection between his inability to post bail for the state offense and the inapplicable crediting provisions of § 3568. Nor does Basco's equal-protection argument, when viewed in light of its merits, "implicate[] the fairness, integrity or public reputation of the sentencing proceedings

against him." U.S. v. Lopez, 923 F.2d 47, 50 (5th Cir.), cert. denied, 111 S.Ct. 2032 (1991).

AFFIRMED.