

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3629
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MILTON KEITH HAMILTON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-344 (CR 92-216 "N" (2))
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Milton Keith Hamilton appeals the district court's denial of his motion for credit on his sentence. He argues that he is entitled to credit for the fifty-nine days he served in a halfway house prior to sentencing.

A petitioner seeking credit on his sentence must file a habeas corpus petition pursuant to 28 U.S.C. § 2241. United States v. Gabor, 905 F.2d 76, 77-78 & n.2 (5th Cir. 1990); see also United States v. Cleto, 956 F.2d 83, 84 (5th Cir. 1992).

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Hamilton's motion thus should have been filed as a habeas petition under § 2241.

To entertain a § 2241 habeas petition, however, the district court must, upon the filing of the petition, have jurisdiction over the prisoner or his custodian. Gabor, 905 F.2d at 78. A petition under § 2241 must be filed in the district where the claimant is incarcerated. Id. If the petitioner files in another district, that court has no jurisdiction to hear the petition.

Hamilton brought his motion in the Eastern District of Louisiana while incarcerated in the Middle District of Louisiana. He is in the Federal Medical Center, Carville, in Ascension Parish. See 28 U.S.C. § 98(b). Thus, the Eastern District of Louisiana was without jurisdiction to hear the petition, as it should have been filed, pursuant to 28 U.S.C. § 2241, in the federal district court where Hamilton is incarcerated. See Gabor, 905 F.2d at 77. The judgment is VACATED and REMANDED and the district court is directed to dismiss the petition for lack of jurisdiction.