

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8828
Summary Calendar

WESLEY GENE ALIFF,

Plaintiff-Appellant,

versus

GARY PAINTER, Sheriff of
Midland County, Texas, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(MO-93-CV-206)

(May 11, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit
Judges.

PER CURIAM:*

In October 1983 Wesley Gene Aliff was convicted in Texas state
court of aggravated robbery and was sentenced to prison for 15
years. He was released in 1989 and placed under mandatory
supervision which subsequently was revoked. Due to overcrowding at

*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should not be published.

the state institutions, Aliff was incarcerated at the Midland County Detention Center.

Aliff filed the instant petition under 28 U.S.C. § 2254, alleging that because of his incarceration at the Midland County facility he was denied an opportunity to earn the good-time credits available to state inmates in state institutions. In addition he was not eligible for restoration of previously earned good-time credits which were forfeited when the supervision was revoked.¹ The district court dismissed the petition under Rule 4 of the Rules Governing 28 U.S.C. § 2254 Cases and Aliff timely appealed.

We agree with the district court that Aliff does not present a cognizable due process claim because Texas law does not create a liberty interest in good-time credits; they are considered "a privilege and not a right."² Aliff also advances an equal protection claim, however, and the protected interest element of a due process claim is not a necessary element of an equal protection claim.³

Aliff's petition alleges that he is treated differently from other state prisoners with respect to good-time credits because he is incarcerated in a local facility. He alleges that because of his incarceration in a local facility he is not allowed the opportunity to earn good-time credits that all prisoners in state prisons are accorded. That claim should not have been dismissed

¹Tex. Gov't. Code Ann. § 498.004 (West Supp. 1993).

²Tex. Gov't. Code Ann. § 498.003.

³**Brennan v. Stewart**, 834 F.2d 1248 (5th Cir. 1988).

under Rule 4.

AFFIRMED IN PART, VACATED IN PART, and REMANDED for further proceedings consistent herewith.