

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10546
Conference Calendar

HIEU DUC TRAN,

Petitioner-Appellant,

versus

GEORGE E. KILLINGER, Warden
FCI, Fort Worth,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:93-CV-846-A

- - - - -
(September 20, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

The district court dismissed without prejudice Hieu Duc Tran's petition for a writ of habeas corpus, 28 U.S.C. § 2241, for failure to exhaust administrative remedies. This Court can affirm on other grounds. Hanchey v. Energas Co., 925 F.2d 96, 97 (5th Cir. 1990).

A federal prisoner must exhaust administrative remedies before bringing a petition under § 2241. See United States v. Cleto, 956 F.2d 83, 84 (5th Cir. 1992). However, if the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

petitioner fails to plead a viable claim under § 2241, this Court may dismiss the petition on the merits without requiring exhaustion. Cf. Colvin v. Estelle, 506 F.2d 747, 748 (5th Cir. 1975) (28 U.S.C. § 2254 does not require the waste of judicial resources which would necessarily follow a remand in a case in which the petitioner fails to plead a cognizable constitutional violation).

Tran was originally sentenced to consecutive terms of ten years imprisonment on a conspiracy count and five years imprisonment on a substantive count. The sentencing court granted Tran's Fed. R. Crim. P. 35 motion and amended the judgment to have the terms of imprisonment run concurrently and to give him credit for time served while under electronic monitoring. The sentencing court then issued an amended order deleting the language giving Tran credit for time served on electronic monitoring. The amended order was intended to supersede the order granting the Rule 35 motion and to delete the reference to credit for time served on electronic monitoring.

Tran argues in his petition that he is entitled to credit for time served on electronic monitoring. We have rejected this argument. See Cox v. Warden, Federal Detention Center, 911 F.2d 1111, 1114 (5th Cir. 1990); Cerrella v. Hanberry, 690 F.2d 606, 607 (5th Cir.), cert. denied, 454 U.S. 1034 (1981). The judgment of the district court is AFFIRMED.