

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-10526  
Conference Calendar

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NOE GARCIA,

Petitioner-Appellant,

versus

JOHN M. TOMBONE, Warden,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:97-CV-823-H  
- - - - -

August 15, 1997

Before KING, HIGGINBOTHAM, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Noe Garcia, federal prisoner # 44802-019, appeals the district court's dismissal of his 28 U.S.C. § 2241 habeas corpus petition. He argues that his due process rights were violated when the Federal Bureau of Prisons denied him a one-year sentence reduction because he is an Immigration and Naturalization Service (INS) detainee even though he successfully completed a residential drug treatment program pursuant to 18 U.S.C. § 3621(e)(2)(B). Under the plain language of the applicable

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

regulation, Garcia was not eligible for the one-year sentence reduction because he is an INS detainee. 28 C.F.R. § 550.58. Because Garcia did not meet the eligibility requirements for obtaining the sentence reduction under 18 U.S.C. § 3621(e)(2)(B) and 28 C.F.R. § 550.58, Garcia did not have a liberty interest in receiving the sentence reduction that was protected by the Due Process Clause. Garcia has not shown that the district court erred in dismissing his § 2241 habeas petition without conducting an evidentiary hearing. See United States v. Tubwell, 37 F.3d 175, 179 (5th Cir. 1994).

In his appellate brief, Garcia moved for appointment of counsel on appeal. Garcia's motion for appointment of counsel is DENIED.

AFFIRMED; MOTION FOR APPOINTMENT OF COUNSEL DENIED.

July 31, 1997