

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 97-41039  
Conference Calendar

---

JEFFERY ELGIN CRUMEDY,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

- - - - -  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:95-CV-438  
- - - - -

April 16, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Jeffery Elgin Crumedy, Texas prisoner # 612356, appeals the denial of his 28 U.S.C. § 2241 petition seeking credit towards his federal sentence for time served in state custody. The petition was proper under § 2241 because Crumedy is challenging the execution of his federal sentence. See United States v. Cleto, 956 F.2d 83, 84 (5th Cir. 1992). Because his petition was filed before the enactment of the Antiterrorism and Effective Death Penalty Act, neither a certificate of probable cause nor a

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

certificate of appealability is required. See Green v. Johnson, 116 F.3d 1115, 1119-20 (5th Cir. 1997); Ojo v. INS, 106 F.3d 680, 681-82 (5th Cir. 1997).

Crumedy is, however, required to exhaust administrative remedies before proceeding. See United States v. Wilson, 503 U.S. 329, 335 (1992); United States v. Dowling, 962 F.2d 390, 393 (5th Cir. 1992). The Bureau of Prisons ("BOP") determined that Crumedy's claim was premature because it will not calculate Crumedy's sentence, including any credit for time served, until he reports for federal custody. See Wilson, 503 U.S. at 334-35. Since his sentence has not yet been calculated, Crumedy's § 2241 petition is likewise premature. Additionally, his claim for credit appears to be without merit on its face. See Savage v. Henderson, 475 F.2d 78, 79 (5th Cir. 1973). The district court's judgment is AFFIRMED.