

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-51026
Summary Calendar

CHRISTOPHER SEPEDA,

Petitioner-Appellant,

versus

LESTER E. FLEMING, Warden,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-97-CV-602
- - - - -

August 10, 1998

Before DUHE', DeMOSS and DENNIS, Circuit Judges.

PER CURIAM:*

Christopher Sepeda, federal prisoner # 61190-080, appeals the district court's denial as moot of his application for writ of habeas corpus pursuant to 28 U.S.C. § 2241. In Venegas v. Henman, 126 F.3d 760, 762 (5th Cir. 1997), cert. denied, 118 S. Ct. 1679 (1998), this court addressed the issue of sentence reductions for inmates who completed substance abuse treatment programs. Specifically, we concluded that it was within the BOP's discretion to deny a sentence reduction to inmates with 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

sentencing guideline enhancement for possession of a firearm in relation to a drug trafficking crime. See id. 764-65.

The Bureau of Prisons' exclusion of felon-in-possession of a weapon convictions and drug convictions with enhanced sentences due to possession of a weapon from eligibility for early release after substance abuse treatment is consistent with the letter and spirit of the Bureau's authority as derived from section 3621(e). The loss of the mere opportunity to be considered for discretionary early release is too speculative to constitute a deprivation of a constitutionally protected liberty interest.

Id. at 765 (citing Luken v. Scott, 71 F.3d 192, 193 (5th Cir. 1995), cert. denied, 116 S. Ct. 1690 (1996)).

Given the holding in Venegas, Sepeda has not presented an issue of constitutional dimension. It is on this basis that the dismissal of his § 2241 application is affirmed. See Bickford v. International Speedway Corp., 654 F.2d 1028, 131 (5th Cir. 1981). Respondent's motion to dismiss the appeal as moot is DENIED.

AFFIRMED; MOTION DENIED.