

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10416
Conference Calendar

JAMES A. GILBERT,

Petitioner-Appellant,

versus

JOHN TOMBONE, Warden, Federal
Correctional Institution at
Seagoville,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CV-3043-P
- - - - -

December 9, 1998

Before DAVIS, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

James A. Gilbert, federal prisoner # 60342-079, appeals the district court's denial of his 28 U.S.C. § 2241 petition. He also moves this court for release pending appeal. The motion for release is DENIED. Because the relief he sought concerned a nonconstitutional sentencing issue that could have been raised on direct appeal, his claims were not cognizable in § 2241 or § 2255. This appeal is frivolous. See *Ojo v. INS*, 106 F.3d 680, 683 (5th Cir. 1997).

It is DISMISSED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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