

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10089
Conference Calendar

JAMES A. GILBERT,

Petitioner-Appellant,

versus

UNITED STATES PAROLE COMMISSION;
JOHN TOMBONE, Warden,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3-97-CV-2790-H

April 13, 2000

Before WIENER, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:*

James A. Gilbert, federal prisoner # 60342-079, filed a habeas corpus petition seeking to have his combined sentence reduced to the 69 months as stated in the parole commission's corrected notice of action. The district court denied relief and Gilbert appealed.

On April 30, 1999, the parole commission entered a nunc pro tunc order changing Gilbert's parole effective date from December

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

11, 1997, to September 11, 1997, to comply with its earlier decision that Gilbert serve 69 months of imprisonment. This was the relief that Gilbert sought in his habeas application and on appeal.

Although the appeal was not frivolous when filed, the subsequent action of the parole commission granting Gilbert the relief he sought satisfied the goal of Gilbert's appeal and the appeal became frivolous at that point. Any further pursuit of the matter by Gilbert was without arguable merit and therefore frivolous. The Government's motion to dismiss is GRANTED. Gilbert's motion for immediate release is DENIED as moot.

APPEAL DISMISSED; 5TH CIR. R. 42.2.