

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-40118
Conference Calendar

DALE N. SMITH,

Petitioner-Appellant,

versus

PERCY PITZER, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:98-CV-1892

August 26, 1999

Before KING, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Dale N. Smith, federal inmate # 90045-132, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition. Smith's motion for a ruling on appeal is DENIED.

Smith asserts that he was given a "disciplinary type transfer" from a medium security facility in Tucson, Arizona, to a high security facility in Beaumont, Texas, which violated his constitutional rights. Smith asserts that he was entitled to due process before he was transferred. Smith also asserts that the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court should have conducted a hearing prior to dismissing his petition. Smith asserted in the district court that his transfer was done for retaliatory reasons. Smith does not brief the retaliation issue in this court, and, thus, he has abandoned it. See *Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993).

Smith has not shown that the Bureau of Prison's conduct in transferring him from the prison in Tucson to the prison in Beaumont violated his constitutional rights. See *Olim v. Wakinekona*, 461 U.S. 238, 244-45, 250-51 (1983)(prisoners do not have a constitutional right to be housed in any particular facility or in any particular state); *Meachum v. Fano*, 427 U.S. 215, 228 (1976)(prison officials have discretion to transfer inmates; such transfers do not invoke the protections of procedural due process). Smith has no constitutional right protecting him against a change in custody classification. See *Moody v. Baker*, 857 F.2d 256, 257-58 (5th Cir. 1988).

The district court did not err in denying Smith's petition without conducting a hearing. See *United States v. Tubwell*, 37 F.3d 175, 179 (5th Cir. 1994)(evidentiary hearing is not required when legal claims can be resolved without the taking of additional evidence).

The district court's judgment is AFFIRMED.

AFFIRMED; MOTION DENIED.