

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-7387
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS RAYMOND SHEPPARD,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. CR-1-90-22-C
- - - - -
(January 21, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Sheppard claims that he is entitled to a credit for time he served pursuant to a state charge of felon in possession of a firearm. In his application, Sheppard cites Fed. R. Crim. P. 36, alleging that an error was made in his sentence. Sheppard filed his claim in the Northern District of Texas. A claim for time served prior to the date of a federal sentence is not cognizable in a proceeding pursuant to Fed. R. Crim. P. 36. The claimant must instead proceed via a petition for habeas corpus under 28

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

U.S.C. § 2241. The claimant must file a habeas petition in the district where he is incarcerated; if the claimant files in another district, that court has no jurisdiction to hear the petition. United States v. Mares, 868 F.2d 151, 151-52 (5th Cir. 1989).

Although the district court did not give reasons for denying Sheppard's application for credit, it would have been inappropriate for the district court to deny Sheppard's application for credit for any reason other than its lack of jurisdiction to grant the application. Credit awards may not be made by the district court at sentencing. They are to be made by the Attorney General, through the Bureau of Prisons, after sentencing. See United States v. Wilson, ___ U.S. ___, 112 S.Ct. 1351, 1354-55, 117 L.Ed.2d 593 (1992).

A federal appellate court may uphold a lower court's decision if there is some basis in the record for justifying that action. See Knotts v. United States, 893 F.2d 758, 761 (5th Cir. 1990). Accordingly, the district court's order denying the application for credit is AFFIRMED.