

United States Court of Appeals
for the Fifth Circuit

No. 21-10169
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 10, 2022
Lyle W. Cayce
Clerk

GARY SHELDON,

Petitioner—Appellant,

versus

K. ZOOK, *Warden,*

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CV-3356

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Petitioner-Appellant Gary Sheldon, federal prisoner # 13437-045, appeals the dismissal of his 28 U.S.C. § 2241 petition without prejudice to reasserting his claims in a civil rights action. He has also filed motions for (1) appointment of counsel, (2) expediting the ruling on the motion for the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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appointment of counsel, (3) a preliminary injunction, (4) leave to file a supplemental brief, and (5) expediting the appeal. Only Sheldon's motion for leave to file a supplemental brief is granted.

We also decline to consider Sheldon's challenge to several new charges of disciplinary violations for the first time on appeal. *See Page v. U.S. Parole Comm'n*, 651 F.2d 1083, 1087 (5th Cir. 1981) (refusing to entertain § 2241 petitioner's claims raised for the first time on appeal).

We review a district court's dismissal of a § 2241 petition de novo. *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000). Sheldon argues that the district court abused its discretion by failing to address the merits of his claim involving his prison disciplinary proceeding that resulted in the loss of at least 14 days of good-time credit. Because Sheldon challenged the loss of good-time credit in his petition, he properly sought relief pursuant to § 2241, so his petition should not have been dismissed as to this claim. *Cf. Henson v. U.S. Bureau of Prisons*, 213 F.3d 897, 898 (5th Cir. 2000). We therefore vacate the district court's judgment in part and remand for further proceedings for the district court to address Sheldon's claim under § 2241.

Sheldon also reasserts his claims involving the Bureau of Prisons' classifying him as a sex offender and the prison officials' confiscation of his materials. These claims do not challenge the fact or duration of confinement. *See Pack*, 218 F.3d at 451. The district court's dismissal of these claims without prejudice is therefore affirmed.

Finally, Sheldon's motion for appointment of counsel is denied without prejudice to his reurging it on remand. This is a determination better addressed first by the district court. Sheldon's remaining motions are also denied.

For these reasons, the order of the district court is **AFFIRMED IN PART, VACATED IN PART, and REMANDED** for further

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proceedings. Sheldon's motion for leave to file a supplemental brief is GRANTED and his motion for appointment of counsel is DENIED WITHOUT PREJUDICE. His remaining motions are DENIED.