

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-40644
Conference Calendar

MANUEL GARCIA GARZA, JR.,

Petitioner-Appellant,

versus

N. L. CONNER, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:00-CV-261

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Manuel Garcia Garza, Jr. (Garza), federal prisoner # 04668-078, appeals the district court's dismissal of his 28 U.S.C. § 2241 petition in which he challenged the Bureau of Prisons' computation of the sentence for his conviction of possession with intent to distribute 100 kilograms or more of marijuana. Garza argues that the district court erred in determining that his sentence runs consecutively to his prior state sentences.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Garza is not entitled to credit toward his federal sentence for time served on his state sentences because he received credit on his state sentences until he was released into federal custody. See 18 U.S.C. § 3585(b); Leal v. Tombone, 341 F.3d 427, 428, 430 (5th Cir. 2003). Furthermore, because the federal judgment did not state whether Garza's sentence was to be served concurrently with or consecutively to his state sentences, the sentences are deemed to run consecutively. See 18 U.S.C. § 3584(a). Therefore, the district court did not err in determining that Garza's federal and state sentences run consecutively.

Accordingly, the district court's judgment is AFFIRMED.