

June 10, 2005

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-40422
Summary Calendar

LESLIE IBSEN ROGGE,

Petitioner-Appellant,

versus

ROBERT MILES, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:03-CV-359-MAC-WCR

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Leslie Ibsen Rogge, federal prisoner # 13915-004, appeals the district court's denial of his 28 U.S.C. § 2241 petition. Ibsen challenged the determination by the Bureau of Prisons (BOP) that he had escaped from incarceration, rather than being inadvertently released, and therefore that he was not entitled to credit for the 3884 days he was out of custody. Rogge has not established that the district court erred in determining that the BOP properly found that Rogge had escaped and was not entitled to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the credit. See Royal v. Tombone, 141 F.3d 596, 599 (5th Cir. 1998); Phillips v. Dutton, 378 F.2d 898, 898 (5th Cir. 1967).

Rogge also contends that the BOP denied him due process by failing to give him notice and provide him with a hearing before deciding not to award him the credit for the time he spent out of custody. Because Rogge failed to exhaust his administrative remedies on this ground, he is not entitled to relief. See United States v. Wilson, 503 U.S. 329, 335-36 (1992). Even if Rogge had exhausted the claim, he has not demonstrated a due process violation. Cf. Wolff v. McDonnell, 418 U.S. 539, 557, 561 (1974); Malchi v. Thaler, 211 F.3d 953, 957-58 (5th Cir. 2000). The judgment of the district court is thus AFFIRMED.